1201.

SUPREME COURT OF THE UNITED STATES.

No. 150.

ROBERT CAMPBELL AND OTHERS, PLAINTIFFS IN ERROR,

v.

CLEMENT BOYREAU.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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United States of America, State of California.

Circuit Court of the United States, for the Districts of California, in and for the Northern District.

Pleas before the Judges of the Circuit Court of the United States for the Districts of California, in and for the Northern District, at the court-house in the City of San Francisco, on the 31st day of January, of January Term, in the year of our Lord one thousand eight hundred and fifty-six.

Present: Hon. M. H. McAllister, Hon. Ogden Hoffman, judges of said court.

Northern District of California, *ss.*

Be it remembered, that at the present January Term, in the year of our Lord one thousand eight hundred and fifty-six, before the Honorable M. H. McAllister and Ogden Hoffman, judges of the Circuit Court of the United States, for the Districts of California, in and for the Northern District, at the court-house in the City of San Francisco, came Clement Boyreau, by Saunders and Hepburn, his attorneys, and brought into said court, before the aforesaid judges thereof, their certain bill or complaint against Robert Campbell, Frank Miller, Hiram Vanheyning, John Scillen, Henry , Moses Wicks, Thomas Mulford, Minor Smith, William Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, D. D. Mann, Wm. Hardy, Miranda Kemble, Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin Ray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Isaac Allen, Emerson T. Crane, Cowles, Nelson Olds, William Campbell, James Kennedy, George Zimmerman, Wm. Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, McLelland, defendants, of a plea of trespass and ejectment, which said bill follows in these words, that is to say:

Complaint.

In the Circuit Court of the United States for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, Frank Miller, Hiram Vanheyning, John Scillen, Henry , Moses Wicks, Thomas Mulford, Minor Smith, William Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, D. D. Mann, Wm. Hardy, Miranda Kemble, Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin Kay, Charles Shutliffe, John Woods, James Adams, John Chisolm, Isaac Allen, Emerson T. Crane, Cowles, Nelson Olds, William Campbell, James Kennedy, George Zimmerman, Wm. Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, McLelland.

United States of America, Northern District of California, *ss.*

The above-named plaintiff, an alien, and citizen of the Empire of France, at present a resident of the State of California, Northern District aforesaid, complains of the above-named defendants, citizens of the State of California, and residents of the district aforesaid, as follows:

That on the fifteenth day of November, A. D. 1855, the plaintiff, being the owner in fee, and entitled to the possession of the following described tract of land, to wit:

All the undivided half of an undivided eighteenth part of that certain tract of land, rancho, or farm, known as the "Rancho San Leandro," situate in the County of Alameda, State aforesaid, bounded as follows: On the north, by the San Leandro Creek; on the west, by the Bay of San Francisco; on the south, by the San Lorenzo Creek; and on the east, by a line commencing on the southern bank of the San Leandro Creek, at a point on said bank, from whence a line bearing south 29 degrees east, will strike the eastern bank of a lagoon, situated about six or seven chains south of said creek, thence running on said line about two hundred and sixty-two (262) chains (parallel with a ridge of hills running from the San Leandro Creek to the San Lorenzo Creek), to the San Lorenzo Creek, at a point at the base of the foot hills on the said creek.

And the plaintiff, being then in possession of said premises, the defendants unlawfully and wrongfully entered and trespassed into and upon said premises, and ousted the plaintiff therefrom, and have ever since withheld, and now withhold, the possession of the same from the plaintiff, who is entitled to entry thereon, to the injury and damages of the plaintiff one thousand dollars.

Whereupon the plaintiff prays for judgment, that he recover the possession of said land and premises from said defendants, and also for the sum of one thousand dollars damages, and costs of suit.

Dated San Francisco, January 31st, 1856.

SAUNDERS & HEPBURN,
Attorneys for Plaintiff.

Indorsed: Filed January 31st, 1856.

GEO. PEW JOHNSTON,
Clerk.

Summons.

Whereupon, on the 31st day of January, A.D. one thousand eight hundred and fifty-six, the clerk of the said court issued the following summons, to wit:

United States of America, in the Circuit Court of the United States, for the Districts of California.

CLEMENT BOYREAU, Plaintiff,
v.
ROBERT CAMPBELL, and others, Defendants.

Action brought in the said Circuit Court, and the complaint filed in the City and County of San Francisco, in the office of the Clerk of the said Circuit Court.

The President of the United States of America, greeting:

To Robert Campbell, Frank Miller, Hiram Vanheyning, John Scillen, Henry Mathewson, Moses Wicks, Thomas Mulford, Minor Smith, William Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, D. D. Mann, Wm. Hardy, Miranda Kemble, B. Philips, Joseph H. Taylor, Elijah F. Dixson, John Huff, Franklin Ray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Isaac Allen, Emerson T. Crane, ——— Cowles, Nelson Olds, William Campbell, James Kennedy, George Zimmerman, ——— Johnson, Wm. Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, ——— McClane.

You are hereby required to appear, in an action brought against you by the above-named plaintiff, in the Circuit Court of the United States, for the District of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a copy of which accompanies this summons), in the office of the clerk of said court, in the City and County of San Francisco, within ten days (exclusive of Sundays and the day of service), after the service on you of this summons, if resident and served within this county; or if resident and served out of this county, then within forty days; or judgment by default will be taken against you.

The said action is brought to recover the possession of a certain tract of land and premises, particularly set forth and described in

the complaint in this action, and for one thousand dollars damages for the unlawful and wrongful detention thereof, and costs of suit.

And if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you, and each of you.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 31st day of January, in the year of our Lord one thousand eight hundred and fifty-six, and of our Independence the eightieth.

Attest:

[L. S.] GEO. PEW JOHNSTON,
Clerk.

Upon which said summons the Marshal made a return, on the 4th day of February, A. D. one thousand eight hundred and fifty-six, in the following words, to wit:

Office of the United States Marshal of the Northern District of California.

I do hereby certify, that I received the within summons on the 31st day of January, A.D. 1856, and personally served a copy of the same on the 31st day of January, A.D. 1856, by delivering to Nelson Olds, one of the defendants, personally, in the City and County of San Francisco, a copy of said summons attached to a certified copy of the complaint, and also by delivering a copy of said summons attached to a certified copy of the complaint, on the first day of February, A. D. 1856, in the County of Alameda, Northern District of California, to Robert Campbell, Frank Miller, Hiram Vanheyning, Moses Wicks, Minor Smith, John B. Locke, Peter Conroy, Jeremiah Borst, D. D. Mann, William Hardy, Miranda Kemble, B. Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin Ray, Charles Shutliffe, John Woods, James Adams, —— Allen, William Campbell, James Kennedy, Augustus Johnson, William Cathcart, Jacob Everson, Peter Johnson, and Alexander Powell; and also, by delivering a copy of the same to the wife of John Chisolm and George Zimmerman (they being temporarily absent from their place of residence); and also, by leaving a copy of the same at the place of residence of Henry Mathewson, William Smith, E. T. Crane, —— Cowles, and Thomas Mulford (they being temporarily absent); also on —— McClane and Thomas Corey, by nailing a copy of the same on the house of the said McClane and Thomas Corey (they being temporarily absent), on the 2d day of February, A.D. 1856; John Scillen, after due search, is not found.

Dated San Francisco, Northern District of California, February 2d, A. D. 1856.

WILLIAM H. RICHARDSON,
U. S. Marshal.

By E. C. PALMER,
Deputy.

1204

Indorsed: Filed February 4th, 1856.
GEO. PEW JOHNSTON,
Clerk.

Demurrer to Complaint.

And afterwards, to wit, on the 7th day of March, one thousand eight hundred and fifty-six, aforesaid, came the defendants by their attorneys, Crane & Campbell, and demur to the complaint of plaintiff, which demurrer follows in these words, that is to say:

In the Circuit Court of the United States, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller (sued as Frank Miller), Hiram A. Vanheyning (sued as Hiram Vanheyning), John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford (sued as Thomas Mulford), E. Minor Smith (sued as Minor Smith), William C. Smith (sued as William Smith), John B. Locke, Peter Conroy, Jeremiah Boyce, Darwin T. Mann (sued as Darwin Mann), William B. Hardy (sued as William Hardy), Miranda Kemble, Bonaparte Philips (sued as "Philips"), Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin N. Wray (sued as Franklin Wray), Charles Shutliffe, John Wood, James Adams, John Chisolm, Alexander Allen (sued as Isaac Allen), Emerson T. Crane, Freedom H. Cowles (sued as "Cowles"), Nelson W. Olds (sued as Nelson Olds), William Campbell, James Kennedy, George Zimmerman, Augustus Johnson (sued as Johnson), William Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John McLean (sued as McLelland).

United States of America, Northern District of California, *ss.*

Come now the said defendants, and say, that the said complaint of the said plaintiff, and the matters therein stated, in manner and form as the same are therein stated and set forth, are not sufficient in law to enable the said plaintiff to have and maintain his said action against them.

And for causes of demurrer, defendants say:

1. That said complaint does not state facts sufficient to constitute a cause of action.

2. The said complaint nowhere directly avers that plaintiff was ever, at any time, in possession of the land therein specified.

3. It does not appear by said complaint, nor is it therein stated, when, or on what day, the defendants entered into and upon said premises.

4. It is nowhere stated or charged in said complaint that defendants unlawfully withhold the possession of the premises from the plaintiff.

Dated San Francisco, March 7th, 1856.

A. M. CRANE and
THOMAS CAMPBELL,
Defendants' Attorneys.

Indorsed: Filed March 7th, 1856.

GEO. PEW JOHNSTON,
Clerk.

Order sustaining Demurrer and granting leave to amend.

And afterwards, to wit, on the twelfth day of July, of term of July, in the year of our Lord one thousand eight hundred and fifty-six, before the judges aforesaid, at the court-house aforesaid, being a term of said court, the following order was duly made and entered in said cause, to wit:

At a stated term of the Circuit Court of the United States of America for the Districts of California, held at the court-house in the City of San Francisco, on Saturday, the 12th day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Honorable M. Hall McAllister, Judge of said court.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et als. } Common Law.

And now, at this day, came the parties to this cause, by their respective attorneys, and the argument on the demurrer having been heard and duly considered by the court: It is ordered, adjudged, and decreed, that the demurrer be sustained on the third and fourth grounds taken in it, and that plaintiff have leave to amend his complaint.

Indorsed: Filed July 12th, A. D. 1856.

GEO. PEW JOHNSTON,
Clerk.

Amended Complaint.

And afterwards, to wit, on the nineteenth day of July, of term of July, in the year of our Lord one thousand eight hundred and fifty-six, the following complaint was duly made and entered in said cause, to wit:

In the Circuit Court of the United States, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, Frank Miller, Hiram Vanheyning, John Scillen, Henry , Moses Wicks, Thomas Mulford, Minor Smith, William Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, D. D. Mann, Wm. Hardy, Miranda Kemble, Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin Ray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Isaac Allen, Emerson T. Crane, Cowles, Nelson Olds, William Campbell, James Kennedy, George Zimmerman, Johnson, Wm. Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, M'Clelland.

United States of America, Northern District of California, *ss.*

The above-named plaintiff, an alien and citizen of the Empire of France, at present a resident of the State of California, Northern District aforesaid, by this his amended complaint, complains of the above-named defendants, citizens of the State of California, and residents of the District aforesaid, as follows:

That on the fifteenth day of January, A.D. 1856, the plaintiff was the owner in fee, and entitled to the possession and in possession of the following described tract of land, to wit:

All the undivided half of an undivided eighteenth part of that certain tract of land, rancho, or farm, known as the "Rancho San Leandro," situate in the County of Alameda, State aforesaid, bounded as follows: on the north by the San Leandro Creek; on the west by the Bay of San Francisco; on the south by the San Lorenzo Creek, and on the east by a line commencing on the southern bank of the San Leandro Creek, at a point on said bank, from whence a line bearing south 29 degrees east, will strike the eastern bank of a lagoon, situated about six or seven chains south of said creek, thence running on said line about two hundred and sixty-two (262) chains, parallel with a ridge of hills running from the San Leandro Creek to the San Lorenzo Creek, to the San Lorenzo Creek, at a point at the base of the foot hills on the said creek.

And afterwards, to wit, on the 16th day of January, 1856, the plaintiff being then in possession of said land and premises, the defendants unlawfully and wrongfully entered and trespassed into and upon said premises, and ousted the plaintiff therefrom, and have ever since unlawfully and wrongfully withheld, and now unlawfully possess and unlawfully and wrongfully withhold the possession of the same

from the plaintiff, who is entitled to entry therein, to the injury of the plaintiff, one thousand dollars.

Whereupon the plaintiff prays for judgment, that he recover the possession of said land and premises from the said defendants, and also for the sum of one thousand dollars damages, and costs of suit.

Dated San Francisco, July 19th, 1856.

SAUNDERS & HEPBURN,
Attorneys for Plaintiff.

Indorsed: Filed July 19th, A.D. 1856.

GEO. PEW JOHNSTON,
Clerk.

Separate Answer of James Kennedy and others.

And afterwards, to wit, on the thirteenth day of August, one thousand eight hundred and fifty-six, came James Kennedy and others, by their attorneys, and filed their following separate answer in these words, that is to say:

In the Circuit Court of the United States, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller (sued by the name of Frank Miller), Hiram A. Vanheyning (sued as Hiram Vanheyning), John Scillen, Henry Scillen (sued as Henry), Moses Wicks, Thomas W. Mulford (sued as Thomas Mulford), E. Minor Smith (sued as Minor Smith), William C. Smith (sued as William Smith), John B. Locke, Peter Conroy, Jeremiah Boyce, Darvin D. Mann (sued as D. D. Mann), William B. Hardy (sued as William Hardy), Miranda Kemble, Bonaparte Philips (sued as Philips), Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray (sued as Franklin Ray), Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen (sued as Isaac Allen), Emerson T. Crane, Freedom H. Cowles (sued as Cowles), Nelson H. Olds (sued as Nelson Olds), William Campbell, James Kennedy, George Zimmerman, Augustus Johnson (sued as Johnson), William Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, John M'Lean (sued as M'Clelland).

United States of America, Northern District of California, *ss.*

Came now the said defendants, James Kennedy, Freedom H.

Cowles, Emerson T. Crane, Alexander Allen, William Campbell, John Chisolm, James Adams, John Wood, Joseph H. Taylor, Augustus Johnson, Jacob Everson, Peter Johnson, and Nelson H. Olds, and severing in their answer from their co-defendants herein, for answer to the said complaint of the said plaintiff say, that they deny specifically each and every allegation in said complaint; they deny that on the fifteenth day of January, 1856, or at any other time, the plaintiff was the owner in fee, and entitled to the possession of the land described in said complaint; they deny that on the 16th day of January, 1856, the said plaintiff was in possession of said land and premises, or that they on that day or any other day unlawfully and wrongfully entered and trespassed into and upon said premises, or that they ousted the plaintiff therefrom; they deny that they have at any time unlawfully or wrongfully withheld the possession of said land from the said plaintiff; they deny that the said plaintiff is entitled to entry into said land, or that he has sustained any injury whatever by any act or trespass of these defendants or either of them.

Defendants say, that they and each of them are not guilty of the wrongs and trespass in said complaint alleged against them; and they explicitly deny that the plaintiff has or ever had any title whatever to the land, or any part thereof, in said complaint specified.

And the said defendants aver, that they have made lasting and valuable improvements on the said land, as described in said plaintiff's complaint, to wit, the erection of dwelling-houses, barns, and other out-houses, the construction of fences, and the planting of orchards, of the value of thirty thousand dollars, and they further aver that they have growing crops upon said land.

Defendants demand judgment, that they may go hence without day, and for their damages, costs, and charges herein.

Dated August 14th, 1856.

CAMPBELL and CRANE,
Attorneys for Defendants.

Indorsed: Filed August 13th, 1856.

GEO. PEW JOHNSTON,
Clerk.

Separate Answer of William F. Miller, and others.

And afterwards, to wit, on the thirteenth day of August, one thousand eight hundred and fifty-six, came Wm. F. Miller, and others, by their attorneys, and filed their following separate answer, in these words, that is to say:

In the Circuit Court of the United States, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller (sued by the name of Frank Miller), Hiram A. Vanheyning (sued as Hiram Vanheyning), John Scillen, Henry Scillen (sued as Henry), Moses Wicks, Thomas W. Mulford (sued as Thomas Mulford), E. Minor Smith (sued as Minor Smith), William C. Smith (sued as William Smith), John B. Locke, Peter Conroy, Jeremiah Boyce, Darvin D. Mann (sued as D. D. Mann), William B. Hardy (sued as William Hardy), Miranda Kemble, Bonaparte Philips (sued as Philips), Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray (sued as Franklin Ray), Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen (sued as Isaac Allen), Emerson T. Crane, Freedom H. Cowles (sued by the name of Cowles), Nelson H. Olds (sued as Nelson Olds), William Campbell, James Kennedy, George Zimmerman, Augustus Johnson (sued as Johnson), William Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, John M'Lean (sued as M'Clelland).

United States of America, Northern District of California, *ss.*

Came now the said defendants, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, Darvin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, George Zimmerman, William Cathcart, Thomas Corey, Alexander Powell, and John M'Lean, and severing in their answer from their co-defendants herein, for answer to the complaint of the said plaintiff say, that they deny specifically each and every allegation in said complaint. They deny, that on the fifteenth day of January, 1856, or at any other time, the plaintiff was the owner in fee, and entitled to the possession of the land described in said complaint. They deny, that on the 16th day of January, 1856, the said plaintiff was in possession of said land and premises; or that they on that day, or any other day, unlawfully and wrongfully entered and trespassed into and upon said premises, or that they ousted the plaintiff therefrom. They deny that they have, at any time, unlawfully and wrongfully withheld the possession of said land from the said plaintiff. They deny that the said plaintiff is entitled to entry into said land, or that he has sustained any injury whatever by any act or trespass of these defendants, or either of them.

Defendants say that they, and each of them, are not guilty of the wrongs and trespass in said complaint alleged against them; and they explicitly deny that the plaintiff has, or ever had, any title whatever to the land, or any part thereof, in said complaint specified.

And the said defendants aver, that they have made lasting and valuable improvements on the said land, as described in said plaintiff's complaint, to wit: the erection of dwelling-houses, barns, and other out-houses, the construction of fences, and the planting of orchards, of the value of thirty thousand dollars; and they further aver that they have growing crops upon said land.

Defendants demand judgment, that they may go hence without day, and for their damages, costs, and charges therein.

Dated August 14th, 1856.

CAMPBELL & CRANE,
Attorneys for Defendants.

Indorsed: Filed August 13, 1856.

GEO. PEW JOHNSTON,
Clerk.

And afterwards, to wit, on the thirteenth day of August, one thousand eight hundred and fifty-six, came Robert Campbell, by his attorneys, and filed his following separate answer in these words, that is to say:

Separate Answer of Robert Campbell.

In the Circuit Court of the United States, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller (sued by the name of Frank Miller), Hiram A. Vanheyning (sued as Hiram Vanheyning), John Scillen, Henry Scillen (sued as Henry), Moses Wicks, Thomas W. Mulford (sued as Thomas Mulford), E. Minor Smith (sued as Minor Smith), William C. Smith (sued as William Smith), John B. Locke, Peter Conroy, Jeremiah Boyce, Darvin D. Mann (sued as D. D. Mann), Wm. B. Hardy (sued as William Hardy), Miranda Kemble, Bonaparte Phillips (sued as Phillips), Jos. H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray (sued as Franklin Ray), Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen (sued as Isaac Allen), Emerson T. Crane, Freedom H. Cowles (sued by the name of Cowles), Nelson H. Olds (sued as Nelson Olds), William Campbell, James Kennedy, George Zimmerman, Augustus Johnson (sued as Johnson), Wm. Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John M'Lean (sued as M'Lelland).

United States of America, Northern District of California, *ss.*

Comes now the said defendant, Robert Campbell, and severing in his answer from his co-defendants herein, for answer to the said complaint of the said plaintiff says, that he denies specifically each and every allegation in said complaint; he denies that on the 15th day January, 1856, or at any other time, the plaintiff was the owner in fee, and entitled to the possession of the land described in said complaint; he denies that on the 16th day of January, 1856, the plaintiff was in possession of the said land and premises, or that he, on that day, or any other day, unlawfully and wrongfully entered and trespassed into and upon said premises, or that he ousted the plaintiff therefrom; he denies that he has at any time unlawfully or wrongfully withheld the possession of said land from the said plaintiff; he denies that the said plaintiff is entitled to entry into said land, or that he has sustained any injury whatever by any act or trespass of this defendant.

Defendant says, that he is not guilty of the wrongs and trespasses in said complaint alleged against him; and he explicitly denies that the plaintiff has, or ever had, any title whatever to the land, or any part thereof, in said complaint specified.

And the said defendant avers, that he has made lasting and valuable improvements on the said land as described in said plaintiff's complaint, to wit, the erection of dwelling-houses, barns, and other out-houses, the construction of fences, and the planting of orchards, of the value of five thousand dollars, and he further avers, that he has growing crops upon said land.

Defendant demands judgment, that he may go hence without day, and for his damages, costs, and charges herein.

Dated August 14, 1856.

CAMPBELL and CRANE,
Attorneys for Defendants.

Indorsed: Filed August 13th, 1856.

GEO. PEW JOHNSTON,
Clerk.

And afterwards, to wit, on the 30th day of September, of September Term, in the year of our Lord one thousand eight hundred and fifty-six, before the judges aforesaid, at the court-house aforesaid, being a term of said court, the following order was duly made and entered.

At a stated term of the Circuit Court of the United States of America, for the Districts of California, held at the court-house in the City of San Francisco, on Tuesday, the 30th day of September, A. D. one thousand eight hundred and fifty-six.

Present: Hon. M. Hall M'Allister, Hon. Ogden Hoffman, Jr.

Order to set cause.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al.

And now, at this day, by consent of counsel for the respective parties, it is ordered, that this cause be set for Wednesday, the 8th day of October, A. D. 1856.

Indorsed: Filed 30th day of September, A. D. 1856.

GEO. PEW JOHNSTON,
Clerk.

By CUTLER M'ALLISTER,
Deputy Clerk.

And that afterwards, to wit, at a stated term of the Circuit Court of the United States of America, for the Districts of California, held at the court-house in the City of San Francisco, on Wednesday, the 8th day of October, A. D. one thousand eight hundred and fifty-six.

Present: Hon. M. Hall M'Allister, judge of said court; Hon. Ogden Hoffman, district judge.

Order to hear cause without a Jury.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al. } Common Law.

And now, at this day, come the parties to this cause, by their respective attorneys, and the jurors heretofore summoned on the venire returned by the U. S. marshal, which was issued in this cause. By agreement of the respective counsel, it is ordered by the court, that the cause be heard without a jury, and that the following stipulation be filed in the clerk's office of this court, and entered in the minutes.

In the Circuit Court of the United States, for the Northern District of California.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al.

It is stipulated in this cause, that the same be tried by the court, and that a jury be waived.

(Signed) SAUNDERS & HEPBURN,
For Plaintiff.

(Signed) CAMPBELL & CRANE,
For Defendants.

Indorsed: Filed 8th October, 1856.

GEO. P. JOHNSTON,
Clerk.
WM. STONE BOTTS,
Deputy Clerk.

Whereupon said cause is called for trial, and plaintiff and defendant being ready, this cause is proceeded with.

And now, on the fifteenth day of October, one thousand eight hundred and fifty-six, come the parties to this cause, by their respective attorneys, and filed the following stipulation in regard to boundaries and possessions, in the following words, that is to say:

Stipulations on Boundaries and Possessions.

United States Circuit Court.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al.

Plaintiff's Evidence.

It is hereby stipulated, that the defendants are and were, at the institution of this suit, in possession adversely to plaintiff of the lands lying within the following described boundaries, viz.: the Arroyo of San Leandro on the north; the Arroyo of San Lorenzo on the south; the Bay of San Francisco on the west; and on the east by a line drawn form the Laguna, as shown on the maps, passing the adobie house, leaving it on the east, until it reaches the San Lorenzo, described in plaintiff's evidence as the adobie line.

Defendants' Evidence.

It is further stipulated, that defendants occupy and hold said land, and did so hold at the institution of this suit, according to the memoranda on the plan marked A, both as regards quantity and location, as thereon described, which map is admitted in evidence for that purpose, and none other, and that said defendants hold the parcels upon which these names are written, separately, as described on said map, defendants respectively disclaiming title to or holding all other parts or portions of the land described in said complaint.

October 14, 1856.

SAUNDERS & HEPBURN,
Plaintiff's Attorneys.
CAMPBELL & CRANE,
Defendants' Attorneys.

Indorsed: Filed October 15th, 1856.

GEO. PEW JOHNSTON,
Clerk.
WM STONE BOTTS,
Deputy Clerk.

And afterwards, to wit, on the 27th day of October, one thousand eight hundred and fifty-six, come the parties, by their attorneys, and the following order, denying motion to dismiss cause and setting time for hearing argument, was made in the following words, to wit:

At a stated term of the Circuit Court of the United States of America, for the Districts of California, held at the court-house in the City of San Francisco, on Monday, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Hon. M. Hall M'Allister, Judge of said Court.
" " Ogden Hoffman, United States District Judge.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et als. } Common Law.

Order denying motion to dismiss cause and setting time for hearing Argument.

And now, at this day, it is ordered, that the motion previously made herein to dismiss cause for want of jurisdiction be denied, and that the argument of this cause be set for the 10th day of November, A.D. 1856.

Indorsed: Filed October 27th, 1856.
GEO. PEW JOHNSTON,
Clerk.
WM. STONE BOTTS,
Deputy Clerk.

And afterwards, to wit, on the 28th day of January, one thousand eight hundred and fifty-seven, come the parties defendant, by their attorneys, and filed the following bill of exceptions, in these words, that is to say:

Bill of Exceptions.

United States Circuit Court, for the California Districts.
Northern District.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL and others. }

Be it remembered, that on the trial of this action, after the plaintiff had given evidence tending to prove title in one Robert Grimes Davis, that is to say, the concession and grant to Estudillo, by the Mexican Governor of California, the decease and devise of Estudillo, and the conveyance by Maria Conception, one of the devisees, and

her husband, William U. Davis, to said Robert Grimes Davis, as in the finding of the court herein more particularly appears; and after the plaintiff's attorneys had produced and given in evidence an unrecorded quit-claim deed, dated and acknowledged on the 14th day of November, 1855, purporting to be made by said Robert Grimes Davis to the plaintiff in this suit, and after the plaintiff had vested his case. For the purpose of proving that the said deed, from Robert Grimes Davis, was merely colorable, that the same never had been delivered to the plaintiff, and was intended as a fraud upon the jurisdiction of this court, the defendants called as a witness, Clement Boyreau, the plaintiff in this action, who, being duly sworn as a witness in this cause, testified as follows:

I am the plaintiff in this case.

Question. Do you know Robert Grimes Davis?

Answer. I do. I don't know where he lives; don't know him particularly, except in connection with this case.

Question. Did you make a contract with him for the purchase of this land?

Answer. On the 14th of November, 1855, at the request of a friend, I accepted the transfer of the undivided half of the 1-18th part of the Rancho de San Leandro, for the consideration of eight thousand dollars. I cannot answer the question precisely, for I accepted the transfer purely and simply on account of a friend of mine, and did not know all the parties concerned in the transaction. I do not know Robert Grimes Davis. I never conversed with him, for I accepted the transfer to oblige a friend. M. Touchard never paid any money to Mr. Davis for the property. The deed was not delivered to me. I suppose it was to Mr. Touchard, and is deposited with my attorneys, Messrs. Saunders and Hepburn. The memorandum I have now in my hand, is of the date of the deed. I took it to-day from the deed itself. On the 16th of November, 1855, I had no interest in this purchase myself.

I had not on the 15th of January, 1856.

I have never paid any consideration for the land. I mean that a friend requested me to permit the title to be transferred to me. Robert Grimes Davis never delivered the deed to me, nor did any one else. Mr. Hepburn, of Saunders & Hepburn, said to me, that they held the deed for me, and that it was in their office, and subject to my disposition. I have never done anything limiting or impairing the title in any way. I hold the legal title for Mr. Touchard. He is a Frehchman, not naturalized. I did not personally give orders to commence this suit.—Whereupon the defendants moved the court to dismiss the action, or to render a judgment for defendants herein. Because, 1. The evidence of the plaintiff showed the conveyance to be colorable, and made for the sole purpose of giving the court jurisdiction. 2d. Because the evidence shows no delivery, either in fact or by intent, of the deed to plaintiff.

Which the motion the Court overruled, and to which decision of the Court, so overruling said motion, the defendants, by their counsel, then and there excepted.

And the foregoing was all the evidence given upon the subject of bargaining for said land, paying the consideration therefor, or the actual or constructive delivery of the deed. And, upon the final argument, the defendants insisted that the evidence not only failed to show any title in the plaintiff, but, on the contrary, proved title out of him; and that the Court should so find and render judgment for defendants. But the Court did, from said facts as proved and hereinbefore stated, find that the title was in said plaintiff, and rendered judgment in his favor and against defendants. To which finding and judgment of the Court, defendants, by their counsel, then and there excepted, and pray that this their bill of exceptions may be signed and sealed and made a part of the record. Which is done.

M. H. McALLISTER,
Judge of the Circuit Court of the United States
District Court of California.

Indorsed: Filed January 28, 1857.

GEO. PEW JOHNSTON,
Clerk.

WM. STONE BOTTS,
Dep'y Clerk.

And afterwards, to wit, the following Order for hearing was filed this 1st day of December, one thousand eight hundred and fifty-six, in these words, that is to say:

At a stated term of the Circuit Court of the United States of America, for the Districts of California, held at the court-house in the City of San Francisco, on Monday, the first day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present, The Hon. M. Hall McAllister, Judge of said Court; Hon. Ogden Hoffman, U. S. District Judge.

Order setting time for hearing, December 2d, 1856.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al. } Common Law.

And now, at this day, this cause having been continued from time to time by agreement of parties, without formal continuance by the Court, on motion: It is ordered, that the same be set for hearing tomorrow, Tuesday, the 2d day of December, A. D. 1856.

Indorsed: Filed December 1st, 1856.

GEO. PEW JOHNSTON,
Clerk.

WM. STONE BOTTS,
Dep'y Clerk.

And afterwards, to wit, on the 6th day of December, in the year of our Lord one thousand eight hundred and fifty-six, of September Term aforesaid, being a day to which said cause had been brought by various contingencies, at the court-house aforesaid, in the District aforesaid, before the court aforesaid, the following proceedings were had in said cause, and duly entered of record.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et al.

And now, at this day, come the parties to this cause by their respective attorneys; and further proceedings were had herein. The argument in the cause being concluded, the cause was submitted to the court and taken under advisement.

And afterwards, to wit, on the 28th day of January, one thousand eight hundred and fifty-seven, the said court found the facts in the following words, to wit:

United States Circuit Court, for the California Districts. Northern District of California.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL and others.

Finding of the Court.

This action having been submitted to the court for trial, a jury being expressly waived by agreement of parties, and the evidence and arguments of counsel therein being heard, the court find the facts following:

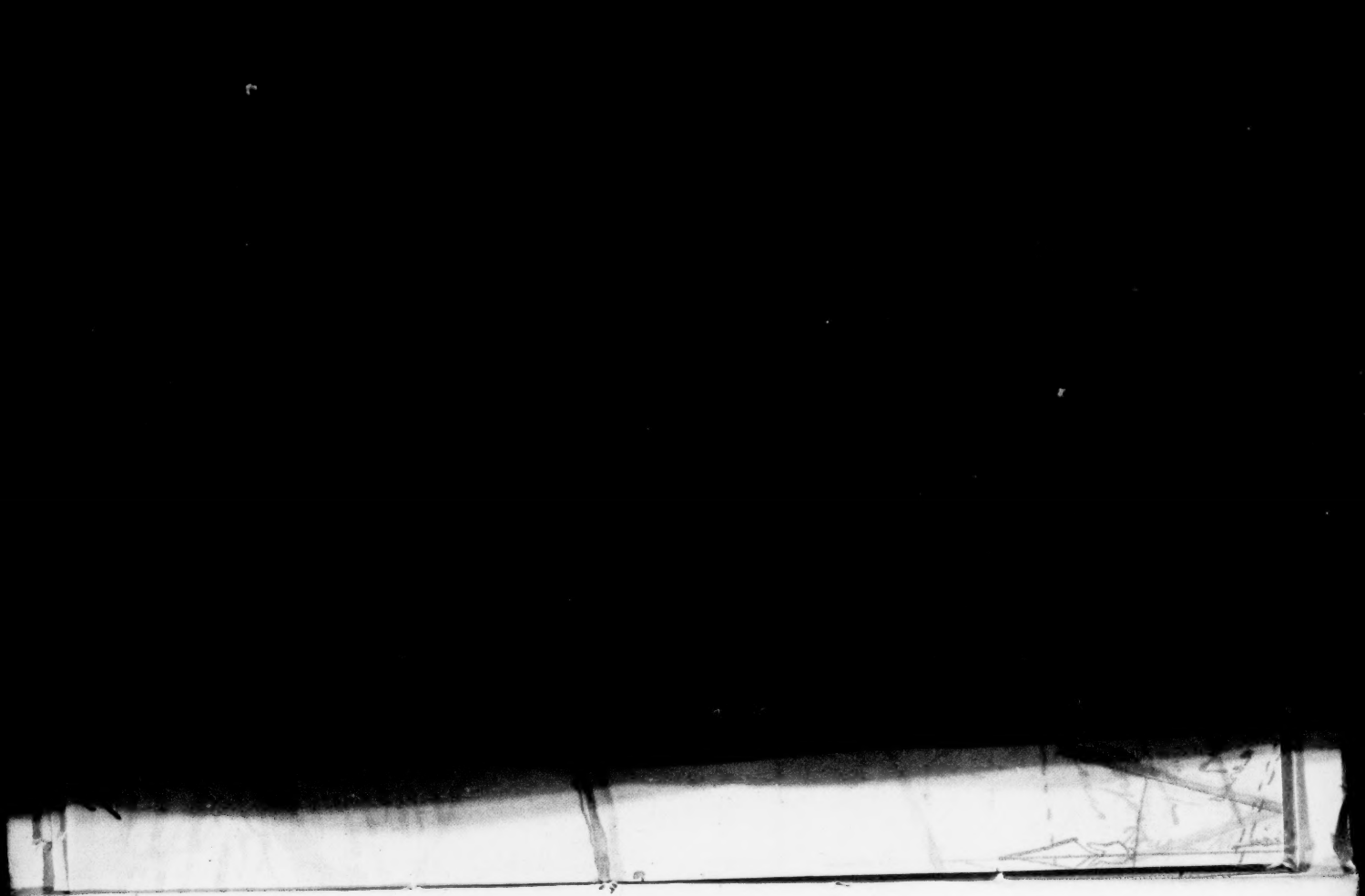
That in the year 1837, Jose Joaquin Estudillo, under a permit, of which the following is an English translation:

Don Joaquin Estudillo shall not be disturbed in his works and occupation on the land where he now is, on the tract of San Leandro, until the Government shall determine what shall be done.

Monterey, August 16th, 1839.

MAN'L JIMENO, [L. S.]

from the territorial authorities of California, settled with his family upon a tract of land situate in what is now the County of Alameda, State of California, and known by the name of San Leandro, and resided there continuously with his family, claiming the same as owner thereof, until his death, which occurred on the 7th June, 1852, since which time his family and legal representatives have continued to reside on said rancho to the time of the trial of this cause, claiming the same under said Jose Joaquin, as owner as aforesaid.



That said Jose Joaquin Estudillo during said period, and until his death, possessed and used the whole of said land in the pasturing, herding, and sustenance of his cattle, except certain portions which were fenced and cultivated by him, in quantity from 200 to 300 acres.

That the boundaries of the tract so occupied and possessed by him were the Arroyo San Leandro to the north, to the west the Bay of San Francisco, to the south, the Arroyo or Creek San Lorenzo, and on the point of east by the crest of a range of hills, which said boundaries were notorious as the boundaries of said rancho, and were observed and used by the said Estudillos, and all adjoining and neighboring rancheros, or owners under Mexican titles.

That said boundaries were called Rodeo boundaries, and were very important to this and other ranchos, as (by the custom of the country) determining the ownership of a large class of cattle, called orejanas, that is, calves unmarked and too old to follow the mother. That by said custom the cattle of every rancho were periodically collected and driven in, or rodeod from the outer limits of the rancho, in the presence of the owners of neighboring ranchos, to some central point of the rancho, where every owner or ranchero identifying cattle with his own marks, accidentally "stray," here might reclaim and take them. But orejanas found here were the property of the ranchero holding the rodeo, because they could not be identified by mark to belong to others, and were found within his boundaries. For this reason, by said custom, the boundaries of ranchos were in general notorious and scrupulously observed and protected.

That said José Joaquin possessed and used said land exclusively as aforesaid, until about the fall of 1851, when Americans began to settle thereon, and that defendants entered thereon since that time, adversely to said Estudillo's title, as public lands of the United States.

That defendants so entered at various times from the month of November, 1853, to the month of November, 1854, and entered and held severally, as shown by the following map, which was by stipulation admitted in evidence to show the respective relative occupations of defendants, and for no other purpose, the names written in red ink and the sections on said map within which they are written, indicating the quantity of land, and the names of the defendants occupying the same respectively.

And when defendants entered upon said, same was uninclosed and uncultivated, but included within the rodeo boundaries and the lines called for by the grant.

(For plat, see original, page 38.)

Where the names of two or more are written within one separate piece on said map, they hold said piece jointly. All the defendants were so occupying said respective parcels at the institution of this action.

And the court further find, that on the 10th day of October, 1842, and while said Estudillo was in the occupancy of said land as aforesaid, he received a grant of land, included within said boundaries, from Juan B. Alvarado, the then actual and constitutional Mexican Governor of California. That said grant was accidentally lost irreclaimably, before the institution of this action, and that its contents, except that it was signed by Alvarado and his secretary Jimeno, are identical with the expediente of said grant, which, with the original petition of said Estudillo, the concession and deceño, are in the words and figures following, the original, in Spanish, being omitted, and the English translation being used by consent of parties, which is in the following words, to wit:

Exmo. Sor.:

The citizen, José Joaquin Estudillo, a Mexican by birth, before your Excellency, appears, through these presents, saying, that with the object of securing the subsistence of and supporting a large family, consisting of his wife and ten children, after having been in the military service for a period of seventeen years, four months, and seven days, he solicited, under date of January 8th, 1837, the land known as the Arroyo de San Leandro to that of San Lorenzo, "four squares leagues of land" (4 sitios de ganado mayor), from west to east, and having obtained from your Excellency, who is kind to and protects the interest of the inhabitants of this country, that I should establish myself, and continue working until the legal proceedings were gone through, which I have done during the long term of five years, five months, and seven days, and as my expediente has been mislaid in the Government Secretary's Office, I now make a new petition, duly accompanied by the annexed draught or plan of the said land, that, in view thereof, you will act as it may please you: remaining perfectly satisfied with your decree. Consequently I entreat your Excellency to view my petition in a favorable light, so that I may receive the favor that I ask for and expect, paying to your Excellency, as homage, my eternal gratitude.

JOSE JOAQUIN ESTUDILLO.

MONTEREY, June 28th, 1842.

MONTEREY, October 16th, 1842.

In view of the petition that heads this expediente, the information that were considered necessary to take, and everything else that was thought of, having found that they agree with the laws and regulations on this subject, I declare Don Joaquin Estudillo owner in possession of a part of the land known under the name of San Leandro, bounded on the north by the "Arroyo San Leandro," on the east by the drainings of the springs on the land occupied by the Indians, now settled there, from this point, in a straight line south, to the Arroyo San Lorenzo, without including the lands cultivated by the above-mentioned Indians, and on the west by the sea. Let the ne-

cessary document be issued, take note of it in the Book of Record, and send this expediente to the Exma. Junta Departamental, for its approbation. His Excellency, the Governor, has thus ordered, decreed, and signed it.

J. B. ALVARADO,
Constitutional Governor of the Department of the California.

Whereas, the citizen Joaquin Estudillo has petitioned, for his personal benefit and that of his family, for a part of the land known under the name of San Leandro, the boundary of which being on the north the "Arroyo San Leandro," on the east the drainings (derramaderos) of the springs in the land occupied by the Indians now settled there; from this point in a straight line south to the "Arroyo de San Lorenzo," without including the land cultivated by the Indians already mentioned, and on the west by the sea, having previously taken all the necessary steps and investigations ordered by the laws and regulation on this subject:

In virtue of the powers conferred on me, in the name of the Mexican nation, I hereby decide to grant him the land mentioned, giving to him the right of possession thereof, by these presents, and by the approbation which he has obtained from the "Exm'a Junta Departamental," being subject to the following conditions:

1st. He has the power to fence it, without interfering with the passage, road, and other rights (servidumbres); he shall enjoy it freely, and exclusively, applying it to any use or culture that may be most agreeable to him; but within a year he shall build a house, and said house must be inhabited.

2d. He shall solicit to be placed in lawful possession, in virtue of this document, from the competent Judge, by whom the boundaries shall be marked out, and, on their borders, he shall, besides placing the landmarks, plant some fruit trees or forest trees of some utility.

3d. The land granted is one square league (one sitio de ganado mayor), a little more or less, as it is shown by the sketch annexed to the expediente on this matter.

The Judge who shall place him in possession must have the land measured according to law, leaving the remainder for the uses the nation may deem proper.

4th. Should he contravene these conditions, he shall lose his right to the land, and it shall be denounceable to any other person.

In virtue thereof, I order (this title being good and valid), that copy of it be taken in the book of record, and that it be delivered to the party interested, for his security and other ends.

Given in Monterey, 16th October, 1842.

Translated by

GUI'NO ELIZONDO.

San Francisco, December 8th, 1856.

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J. ARGAS.

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(For plat, see original, p. 43.)

SAN FRANCISCO, 9th December, 1856.

I hereby certify, that I am well acquainted both with the Spanish and English languages; that I am in the habit of translating from Spanish into English, and from English into Spanish, for the use of Courts of Justice, and individuals; that I have examined the foregoing translation with care, and that I know it is minutely correct and accurate.

J. ARGAS.

That prior to the making and issue of said grant to Estudillo, and in view thereof, one Jose Zenon Fernandez, the alcade of the jurisdiction in which the land lay, was required by the General Prefect to make a plan, or deceno, of the tract San Leandro, and did so: which said map, with a report of Jose Castro, General Prefect, and order of Governor Alvarado, thereon constituted an expediente from the archives of the Mexican Government in California, now in possession of the Surveyor-General of the United States, and is in the words and figures following;—the translation into English being used by consent of parties, instead of the original in Spanish, which is in the following words, to wit:

Expediente of Don Guillermo Castro, wherein he has been permitted to plant upon the site of "San Leandro."

1840.

Prefectura of the First District.

The Justice of the Peace of San Jose de Alvarado, in a communication of the 8th of December last, writes in the following:

In compliance with the order of your Excellency, of the 6th ultimo, to appoint a person to draw a plan of the land of San Leandro, solicited by citizens Guillermo Castro and Joaquin Estudillo, and that it should be accompanied for that purpose, citizen Jose Z. Fernandez was appointed, who, in company with myself and the interested parties, drew it, which plan I transmit to your Excellency, divided in length and width, because the irregularity of the form thereof does not permit an exact division to be made without prejudice to some of the parties; wherefore, to the said Fernandez, it has appeared proper to do it, in the two ways indicated, in order that the Governor in view thereof may determine whatever he may deem proper. The expense thereof having amounted to fifty dollars, which should be equally shared by the interested parties.

In transcribing it to your Excellency, Senor Governor, I transmit to you the aforementioned plan, and repeat to you the assurances of my esteem.

God and liberty.
San José de Castro, January 7th, 1840.
(Signed) JOSE CASTRO.

(For plat, see original, page 47.)

"To the Secretary of State of the Department.

"Marginal Decree.

"January 14th, 1840.

"Don Guillermo Castro can establish himself upon the place called 'San Leandro,' on the part towards the hills, without passing beyond the line from north to south, formed by the springs on said place, not being permitted to make his fields in whatever part of all the land of 'San Leandro.' This concession being understood personally, until the Governor may settle the boundaries which belong to the Senor Estudillo, who is actually established on the said site, and without prejudice to the Indians living thereon."

I, George Fisher, Secretary to the United States Land Commissioner, to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document, in case No. 256, in the docket of said commission, now on file in this office.

In testimony whereof, I have hereunto signed my name, at office, at the City of San Francisco, California, this second day of January, A.D. 1855.

GEO. FISHER,
Secretary.

Indorsed: No. 256. Jose Joaquin Estudillo. San Leandro. Translation. Expediente. Filed in office, January 2d, 1855. Geo. Fisher, Secretary. Recorded Ex. B, Vol. 17, p. 214, E. B. and G.

GEO. FISHER,
Secretary.

U. S. Surveyor-General's Office,
San Francisco, California, Oct. 11th, 1856.

I, John C. Hays, United States Surveyor-General for California, and as such, having under my charge the papers of the late Board of Land Commissioners, to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing to be a correct copy of a document on file, in case No. 256, on the docket of said Board, in which Jose Joaquin Estudillo was claimant for a place called San Leandro, together with the indorsements thereon.

Given under my hand and seal of office, at the City
[L.S.] of San Francisco, this 11th day of October, A.D. 1856.

JOHN C. HAYS,
U. S. Surveyor-General, California.

That the Indians, mentioned in the grant, were located in the neighborhood of an adobe house, on the hills, and near a large bend in the Arroyo San Lorenzo, called the "Passo Viejo;" and that their said occupation would be excluded by a straight line drawn from the deramaderas, or place where the waters from the springs lose themselves, which are proved, in the case, to exist at the base of the hills, southerly to the San Lorenzo, at the large bend aforesaid.

And that said line would include within the boundaries of said grant to Estudillo, the occupation aforesaid of all the defendants, except the defendants William Campbell and Cathcart, occupying a piece of land at the foot of the hills, and indicated by the map in evidence, to fix and establish quantity and location, as aforesaid, at 160 acres.

That said land, described and granted to Jose Joaquin Estudillo by said grant hereinbefore contained, is within the rodeo boundaries aforesaid of said rancho, and contains about 6625 acres, excluding overflowed salt and swamp land.

That the title aforesaid to said Estudillo has been confirmed by the Land Commissioner of the United States to settle land claims in California, and appealed by the United States, but not yet submitted to the District Court of the United States for the Northern District of California, within which District said land is situate; and that no patent for the land has been issued, nor survey made by the Government of the United States for the same.

That said Jose Joaquin Estudillo, at his death, left a will duly executed, and surviving him, his lawful wife, and nine lawful children, to whom, by said will, he devised said rancho; one undivided half thereof to his said wife, and an undivided $\frac{1}{8}$ to each of his said children; and that said land has been legally distributed in the proportions aforesaid to said devisees.

That Maria Jesus, a daughter of the deceased, and one of said children, before the decease of said Jose Joaquin, was lawfully intermarried with William H. Davis, and, from that time to the present, has continued his lawful wife; and that, on the 1st day of November, 1855, said William H. Davis and his said wife, by deed executed and acknowledged according to law, conveyed to Robert Grimes Davis one undivided half of the interest and estate in said land derived to said Maria Jesus from her father, as aforesaid, which conveyance conveyed to said Robert Grimes Davis, in fee, 1-36th part undivided of said rancho, which the said Robert Grimes Davis afterwards, and before the institution of this action, conveyed according to law by deed of conveyance, in fee-simple, to Clement Boyreau, the plaintiff herein.

That the annual rental value of said land is six dollars per acre; and that defendants entered, and have since held, as aforesaid, adversely to the title aforesaid, of Jose Joaquin Estudillo, and his representatives and assigns.

The Court further find, that said expediente of said grant to Estudillo was, at the time of said grant, placed among the Government Archives of California, under the Mexican Government, in accordance with the modes and usages of said Government, in grants of land to individuals, and is now, among said archives, in the possession of the Surveyor-General of the United States for California; and, with other expedientes of similar grants, were the only records or archives of said grants actually made by said Government at the time of the making and issuing of the grant aforesaid to Estudillo, except a book-index of grants proved to be in the handwriting of Jimeno, then the Secretary, which was produced from the archives aforesaid, and has the following entry of the said grant to Estudillo, in the following words, to wit:

[This is translated from the original Spanish by order of the Court.]

Index of the lands granted, and the persons to whom they have been granted:

Las Virgines,	Granted,	To Jose Maria Dominguez,	1
San Leandro,	Granted,	To Joaquin Estudillo,	300

In this index there appears a number of 433 expedientes, but, by an error in numbering, they have omitted from 329 to 340, and have continued the same.

MAN'L JIMENO.

Translated by

GERO'MO ELIZONDO.

San Francisco, December 9th, 1856.

By agreement of parties, the other grants corresponding with the numbers on the extract are omitted.

The letters Co. are contraction of "Concedido," granted or conceded.

An expediente is proved in the cause to be the petition for grants of law; the preliminary concession or order for a formal title to issue, and a copy of a grant actually issued and delivered to the petitioner, and such other proceedings as are had in relation to the subject-matter, which were placed and kept together in the Government archives by the Government officers.

The map in the expediente of the San Leandro grant did not accompany the petition, because the grantee was already in possession, and the information was, according to custom, required of the local alcalde, Fernandez, directly with the view to the grant, and the settlement of a dispute in regard to the boundary between the grantee and Guillermo Castro, bordering on the west towards the hills.

The grant of said adjoining rancho to Castro was made by the

Government two years afterwards, in which, and the deceno accompanying it, the general direction of the eastern boundary line of Estudillo is in conformity with the words of the grant to Estudillo. The expediente of said grant, from said archives, now in possession of the said Surveyor-General of the United States, proved to be genuine, is in the words and figures following, that is to say :

(Translated by order of Court.)

Third seal, one dollar.

Provisionally qualified by the Maritime Custom-house of the Port of Monterey, in the Department of California, for the year 1843.

MANUEL CASTANARES.

MICHELTORENA.

[SEAL.]

Manuel Micheltorena, Brigadier-General of the Mexican Army, Adjutant-General of the staff of the same Governor, Commanding-General and Inspector of the Department of California.

Whereas, Don Guillermo Castro has claimed for his personal benefit, and that of his family, the place known by the name of "San Lorenzo," bounded by the rancho of San Amador, with that of San Moraga, with that of San Ramon, with that of San Peralta, with that of San Estudillo, with that of Sor. Vallejo, and that of Don Franco Soto, on the side of the main road from the Arroyo del Alto to that of San Lorenzo, in consideration that there has been already made a concession to the said Soto, on the side towards the beach, all the necessary steps and investigations relating thereto having been previously taken, according to the provisions of the laws and regulations ; using the powers that are conferred on me, in the name of the Mexican nation, I have conceded to him the tract above mentioned, declaring to him the ownership thereof, by the present letters, subject to the approval of Mt. Ext. Departmental Council, and under the following conditions :

1st. He may fence it, without injury to the cross-ways, roads, and thoroughfares, and without embarrassing the Commons of the Pueblo de San Jose, when they may be assigned, nor hinder the grazing of the cattle of the Mission ; he may enjoy it freely and exclusively, applying it to the use or cultivation which may best suit him.

2d. The tract of which donation is made is six sitios de ganado mayor, without including six hundred varas of land, which are conceded already by an anterior title. The Judge giving the possession shall cause it to be measured according to ordinance, the surplus which may result remaining for the use of the nation.

3d. He shall solicit the proper Judge to give him juridical possession by virtue of this despatch, whereby the boundaries shall be marked, in the limits of which he shall put, besides the landmarks, some fruit trees, or useful wild ones.

4th. If he contravene these conditions he shall lose his right to the tract, and it shall be denounceable by another.

Wherefore, I order that this present, serving to him as a title, and being held as firm and valid, an entry be made thereof in the respective book, and it be delivered to the party interested for his safety and other purposes.

Given at Monterey, the 25th of October, 1843.

MAN'L MICHELT'A.

MAN'L JIMENO,
Secretary.

An entry is made of this despatch in the respective book at p. 2.
JIMENO.

The 17th of January, 1844, by an agreement which Don Carlos Castro, as attorney of his son, Don Guillermo, executed with Don Franco Soto, it resulted according to the acts which were made for the purpose, that the boundaries of the said Don Guillermo Castro should be from the "Sanjou," looking at the south side of his house, and from the same Sanjou in a direction from where it makes parallel with it, six hundred varas should be measured towards the main road, and from where they conclude, a right line be taken up to Arroyo de San Lorenzo, to be recognized as boundaries of the other side of the said Sanjou, the borders of the groups of hills (Lomina), which lie towards the plains measuring ten varas up to the hills of the western side, and Mt. Ext. the Governor-General, Don Manuel Micheltorena, having approved the said agreement, he ordered it to be noted in the title, and signed it.

MAN'L MICHELT'A.

MAN'L JIMENO,
Scrio.

(For plat, see original, page 57.)

I certify the foregoing to be a true and correct translation of the original Spanish document of the same tenor and date exhibited to me, and filed in case No. 285, Guillermo Castro. San Francisco, February 8th, 1853.

GEO. FISHER,
Secretary.

United States Surveyor-General's Office for the State of California.

I, Jno. C. Hays, United States Surveyor-General for California, and, as such, having in my custody the papers of the late Board of Land Commissioners, to ascertain and settle the private land claims in California, do hereby certify the foregoing to be a correct copy of a document on file, in case No. 285, on the docket of said board (in-

dorsed), No. 285,—Guillermo Castro, Rancho of San Lorenzo, II. Translation of Grant No. 2; filed in office, July 8th, 1852; Geo. Fisher, Secretary; recorded in record of Ex, volume 7, page 295.

[L. S.] Given, under my hand and seal of office, at the City of San Francisco, this 9th day of December, 1856.

JOHN C. HAYS,
U. S. Surveyor-General, California.

The court further find, that, in the year 1853, the family and representatives of said Jose Joaquin Estudillo partially inclosed by a fence at least 3000 acres of said land, leaving gaps in the inclosure, and built thereon 6 or 7 houses, all which had been burned before the entry of defendants; and that the same is now in the occupation of some of the defendants.

From the facts aforesaid, the court conclude that plaintiff is entitled, in fee, to one equal thirty-sixth part undivided of the land and tenements described in the complaint, excepting the land, one hundred and sixty acres, at the base of the hills, occupied by William Campbell and —— Cathcart, as to which they are entitled to be acquitted of the trespasses alleged in the complaint.

And that plaintiff is entitled to recover against defendants, respectively, possession of his said share and estate of the respective parcels thereof so occupied by them, the defendants, respectively, as shown by the map aforesaid annexed hereto; that is to say, against each defendant possession of his said estate in the parcel occupied by said defendant; and when, and whenever, two or more occupy together one of said parcels, then, that the plaintiff recover, as aforesaid, such parcel against the defendants jointly so occupying the same as aforesaid.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Indorsed: Filed January 28th, 1857.

GEO. PEW JOHNSTON,
Clerk.

WM. STONE BOTTS,
Dep'y Clerk.

And afterwards, to wit, on the 28th day of January, one thousand eight hundred and fifty-six, the following verdict was filed in these words, that is to say:

Circuit Court of the United States, for the Districts of California, Northern District.

Verdict.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller, Hiram A. Van Heyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin W. Wray, Charles Shutliffe, John Woods, James Adams, John Chiselm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, William Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, John M'Lean.

From the facts contained and set forth in the finding of the court herein, this day filed, and in accordance therewith, the court find the defendants respectively guilty of the trespass alleged in the complaint, as to the respective parcels of land occupied by them, the said defendants, respectively, as shown by said finding, and the map annexed thereto, that is to say, each of said defendants guilty as to the parcel so occupied by him as aforesaid; and when two or more of the defendants occupy a single parcel of land according to said finding and map annexed thereto, we find the defendants so occupying the same jointly guilty of the trespass alleged in the complaint as to the part so occupied by them; and not guilty as to the residue of land described in the complaint, not shown, as aforesaid, to be by them respectively occupied as aforesaid. Except the defendants William Campbell and William Cathcart, as to a piece of land occupied by them (as shown by said finding and map), one hundred and sixty acres at the base of the hills, as to which said parcel, we find them not guilty of the trespass complained of in the complaint.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Indorsed: Filed January 28th, 1857.

GEO. PEW JOHNSTON,
Clerk.

CUTLER McALLISTER,
Deputy Clerk.

Whereupon, to wit, on the 28th of January, one thousand eight

hundred and fifty-seven, the following bill of exceptions was filed in this court, in these words, that is to say:

Bill of Exceptions.

United States Circuit Court, for the California Districts, Northern District.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL and others.

Be it remembered, that on the trial of this action, the plaintiff offered and gave in evidence the following testimony, viz.:

James Alexander Forbes, being called as a witness, and sworn and examined on the part of the plaintiff, testified as follows: I have lived in California 27 years, and am familiar with the habits of early Californians here in regard to rodeos. In all well-regulated ranchos of cattle, the cattle are gathered together at a certain place or places, according to the number of cattle, once a week. The hands or vaqueros go to the boundary lines of the rancho, from whence they drive the cattle to the places, generally from the extent of the rancho; cattle are kept in these places from one to four hours, in order to habituate them.

At the season for marking and branding those cattle, the owners of the adjacent ranchos are notified that the marking and branding is to take place by the person who gives the rodeo, that they may be present at the rodeo, in order to separate their cattle that have strayed among the cattle of the person giving the rodeo. These neighbors are permitted to go among the cattle, in order to separate their own, which they identify by their mark, and by the mother and calf which follows her. After the neighbors, who have attended the rodeo, have separated their cattle, then the owner of the rancho, on which the rodeo is held, marks everything which is left, which includes the orahanas (or unmarked calves); they belong to the owner of the rancho, because they are found within his rodeo limits. The custom is, for the ranchero who gives the rodeo not to pass beyond the limits of his rancho in gathering up his cattle.

I have resided in Contra Costa and Santa Clara Counties for 27 years past; I know the rodeo boundaries of the San Leandro Ranch. It is bounded, east and northeast, by the hills of the Contra Costa Range; south, by the San Lorenzo Creek; north, by the San Leandro Creek; and west, by the Bay of San Francisco. I have been present when rodeos were given on this ranch. I knew Estudillo in his lifetime, and knew when he went on to this ranch. He had a great many cattle; I cannot be definite as to the number, perhaps as many as 3000 head. I saw the first rodeo of Estudillo, between 1837 and 1840, gathered at a rodeo, near his house, about the spot

marked "Hubbard and Colby," on the map shown me now. It was about a half mile from Estudillo's house to the San Leandro Creek. I believe, they had, at one time, a rodeo at or near the place marked "Wells" on this map. I know the rodeo lines of the ranch, from knowing the boundaries of the land. I acquired my knowledge of the bounds of the ranch from the priests of the Mission of San Jose and from general report, and from seeing the lines used and observed by Estudillo and the neighbors. I know that the vaqueros, in gathering cattle for the rodeo, did not go beyond the bounds of the ranch, because the custom of the country did not admit of it. If any cattle were seen just over the line, the custom was to let such cattle go, until a neighboring rodeo was given, and then go and get them.

The rodeo bounds of a grant were not established, until the party had a grant. I have seen the vaqueros driving cattle in from the hills to the rodeo on the Estudillo ranch; but don't know, of my own knowledge, that they did not pass ever the rodeo lines; but know that the custom was, that they should not. As a general thing, either the major domo or the owner of the ranch superintended the matter of gathering the cattle, and took care not to go over the limits of the ranch; often the neighbors attended. I never knew of an instance of going beyond the bounds of the ranch; that would be deemed worse than squatting. William Castro's ranch adjoined this on the southeast, and the San Antonio, or Peralta ranch on the north. Should any vacant land adjoin a ranch, the cattle of a ranch were permitted to range over such vacant land, and the owner went over such land for them, not regarding the boundaries of his ranch on that side.

Estudillo had some cultivation near his house, perhaps 100 acres. The same as testified to by said Forbes, in regard to the custom as to rodeos,—except as to information from the priests of the Mission, the bounds of the San Leandro ranch; and as to rodeos held on this ranch, was also testified to by Jose Martinez, Jose Jesus Vallejo, and John M. Horner,—all of whom testified that they knew said rodeo limits, from seeing them used and observed by Estudillo and adjoining rancheros.

Witnesses called, sworn, and examined on the part of the plaintiff, to the giving of, of which said testimony, the said defendants, by their counsel, then and there objected as being impertinent, illegal, and improper, because:

1. The bounds and extent of a ranch could not be proved by parole.
2. Customs, such as proved, could not be given in evidence for the purpose of establishing or controlling boundaries.

Which objections were overruled by the Court, and the evidence allowed to be given. To which ruling, of the said Court, the defendants, by their counsel, then and there excepted, except as to said information from the priests of the Mission.

And the same evidence was finally acted upon, and had given to it the weight of legitimate testimony by the Court, as appears by the following opinion of the Court, delivered upon rendering final judgment herein.

And thereupon, to wit, the following opinion was rendered in this cause, in these words, that is to say:

CLEMENT BOYREAU
v.
ROBERT CAMPBELL and others.

Circuit Court, United States, for the Districts of California.

This case came before the Circuit Court of the United States, for the Districts of California, in and for the Northern District of said State, at its September Term, 1856, and a jury being waived by the respective parties, the case was submitted to the Judges on the law and facts, with a reservation to the parties of the right to except to the rulings of the court, in relation to the admission of testimony, as well as to the decisions made upon the law of the case upon its merits.

The grant under which, by mesne conveyances, plaintiff claimed was alleged to have been lost, and plaintiff called Juan B. Alvarado, who was Governor at the time the grant was issued, and who testified that the expediente in an application for land, consists of the petition of the applicant, the order for information, the decree of concession, and a draft of the title paper issued to the party. These documents are collected together and preserved in the archives, constituting what is termed the expediente. He further stated that it depended entirely on the Secretary, whether he made out the title first and then copied it, or made the draft first, and then drew up the title to be signed. It was part of the mechanism of his office, that in his time it was customary to give a verbal order to the Secretary to write out the concessions, and that the Secretary sometimes (as in this case) made out a final title without an order of concession signed by the Governor. The witness was unable to recollect an instance where the archives showed a decree of concession on a separate piece of paper, where no information was asked for, nor did he know whether any of the expedientes contained more than one draft of the title. He did not remember any case where the Governor made any alteration or correction of the title as drawn up. He also stated that he recollected various instances where the concession was presented unsigned to the Departmental Assembly. In such cases they made no difficulty, provided it was archived. Sometimes the Secretary of the Assembly, or that of the Governor, observed it, and had it signed, to regularize the proceedings. He further stated that it was usual to deliver the title to the petitioner,

subject to the approval of the Departmental Assembly, and afterwards to send the expediente with a draft of the title to the Assembly for their approval, and that he never knew a case where the draft of the title was put in the expediente without the originals having been first delivered to the party, nor where, after the draft was made, the Governor refused to sign, and the grant was stopped. The witness then, on being shown the expediente, stated that he knew the first paper; that it was the original petition of Estudillo, and was in his handwriting, which he knew. The next paper, the decree of concession, he proved to be in the handwriting of Francisco Arce, at that time first officer of the Secretario. The third paper he also stated to have been written by Arce. The writing on the diseno or plan he stated to be that of Fernandez, an ancient Alcalde of San Jose. He added, that he recognized all these papers as the original documents on which the title issued, and that the plan was not presented by the petitioner, as he was already in possession of the land, but was made by the prefecture in pursuance of his (witness's) orders, and as a means of obtaining information, and to enable him to decide a dispute between Estudillo and Guliellmo Castro, as to boundaries. That on receiving the map, he called the parties together, but being unable to bring them to an amicable settlement, he sent for Jose Castro, and instructed him to endeavor to settle the dispute, and in case of failure, to report what was just to be done. That Jose Castro being unable to effect the settlement, gave him a map with a line drawn on it, as that he thought it just to be established. That the witnesses accepted this line, and ordered the grant to issue, bounded on the east by the Deramadores de Aguas, on the side of the high hills on the west by the Bay, on the south by the Arroyo de San Lorenzo, and on the north by the Arroyo de San Leandro. He also stated that the grant contained the usual conditions, and was for a league more or less, and that there was a special condition that the Indians should not be molested.

A paper was then shown to the witness, which he identified as the official note sent to the Secretary of the Governor, when the latter asked for the first plan. He also identified and proved the report of Jose Castro (a document produced from the archives), and stated the marginal order to be in his (witness's) handwriting.

R. A. Thompson, one of the late Board of Land Commissioners, swore that he had examined some three hundred or four hundred expedientes; that they did not all contain copies or drafts of the grants; that they frequently varied from the grants delivered to the parties, but in a majority of cases not materially,—but in some cases they differed on substantial points; that the proceedings, as shown in the expediente, were regarded by the Board as affording proof of the existence of a grant; that he never saw any book where the titles were recorded; that one has been mentioned, but that it was not kept up, except in the earlier times.

John Saunders deposed, that his professional firm had been employed to prosecute the claim under the Estudillo grant; that, with a view to prosecute the same, he had received a Spanish paper, signed by Juan B. Alvarado, as governor, and Manuel Jimeno, as secretary. It was a grant to Joaquin Estudillo for the ranch of "San Leandro." Governor Alvarado was recalled, and the original expediente of Estudillo, from the archives, was handed to him, and asked if he could identify it, and then testify, from his own recollection, to the contents of the original grant delivered to the party.

To this the defendant's counsel objected on the grounds:

1. Because the draft was not made by himself.
2. It was not compared by him with the original.
3. Because it is not a record, nor a copy of the original authorized by law to be taken.
4. Because not the best evidence in whose handwriting the grant is.

The objections were overruled.

Witness Alvarado, on looking at the expediente, identified it, and recollects it distinctly; and the expediente was admitted as evidence.

B. C. Hopkins was sworn: stated he was a clerk in Surveyor's Office; that a book of titles is to be found among the archives for the years 1834, 1835, 1836; since that time no such book has been kept or found. This witness identified the expediente as one of the archives.

In order to fortify the testimony in relation to the existence of the original grant, S. G. Tenant was sworn on behalf of the plaintiff. He stated that he had seen the original grant in the possession of John B. Ward, about a month after the death of Estudillo, at San Leandro, at the house of the widow of Estudillo; it was signed by Governor Alvarado, whose handwriting was known to witness, and, as witness believes, by Manuel Jimeno. The grant was dated in 1842. Witness was acquainted with the Spanish language.

Jose Berreyesa, another witness, stated that he had seen the original grant to Estudillo in 1843 or 1844, and that the signatures of Alvarado and Jimeno were genuine; that the grant was for the "San Leandro Ranch," for one league square; and witness gave the boundaries of the ranch.

John B. Ward, a witness for plaintiff, was called to prove the loss of the original deed. He was objected to by defendants' counsel, as incompetent, having married one of the daughters and heirs of Estudillo. He was admitted by the Court to prove the loss. He stated he had received a grant signed by Alvarado and Jimeno, officially, from the professional firm of Saunders & Hepburn, attorneys-at-law, on 2d September, 1853, at their office in San Francisco, at one

o'clock P. M.; that Hepburn & Saunders had been employed, professionally, by the heirs of Estudillo, to prosecute their claim before the Land Commissioners; that, having been advised by Messrs. Saunders & Hepburn to engage additionally the services of Judge Thornton, he took the grant to carry it to that gentleman's office; on his way there, he heard of a squatter difficulty on the opposite side of the bay, in the vicinity of the San Leandro, in which a man was killed; that witness hastened across the ferry; that the weather was bad, and witness undertook to pilot the boat; that she was detained all night on the water; that next morning the grant was gone; thinks it must have dropped from his person during the night; he had searched for it in vain, and has never been able to find it.

Cross-examined. Witness had seen the document before he received it from Saunders & Hepburn; it was signed by Alvarado and Jimeno; it had been exhibited to witness by Signora Estudillo as her title; it was the same document received by witness from Saunders & Hepburn.

The defendants moved the Court to exclude all evidence, oral and documentary, which had been given to prove the existence, loss, or contents of the original grant on the grounds,

1. Because the grant itself, if produced, would not prove that a legal title had passed to Joaquin Estudillo.

2. Because the grant had not been approved by the Departmental Assembly.

3. Because there was no official segregation of the land from lands of a like character.

4. Because the title is merely equitable.

5. Because the best evidence of the former existence of the grant has not been produced, the law showing that a record was required to be kept.

This motion was overruled, reserving it for the final decision of the Court after all the testimony should have been delivered.

We proceed now to dispose of it.

A further examination satisfies us, that there was sufficient testimony offered to authorize the introduction of secondary evidence, to establish the existence, contents, and loss of the original grant, and that the best evidence, of which the nature of the case permitted, was given for that purpose. As to the objection, that the title of the plaintiff is merely equitable, because there had been no previous approbation of his grant by the Assembly, it is important in considering it to look to the relative situation of the parties.

Joaquin Estudillo, under whom plaintiff claims, went into possession of the land in controversy in 1837, which he retained until 1842, when he obtained his grant. From that time he continued to reside upon it, until his death in 1852; since which time his widow and family have been in occupation of it. During this long possession, he has had a large stock of cattle on the place, and cultivated it to the

extent of some three hundred acres in different parts. Such is the title of the plaintiff.

The defendants have given no evidence of title whatever, unless the position they assume be correct. It is, that the land in controversy is part of the public domain to which they have pre-emption rights. This position cannot be deemed as giving title. The act of 3d March, 1853, entitled "An Act, to provide for the survey of public lands in California, the granting of pre-emption rights, and for other purposes," expressly exempts from pre-emption this very land claimed, as it is, "under a foreign grant or title." (X. Statutes U. S. 246.)

2. The land in dispute, if public land, as contended for by defendants, is so, because it was acquired by the United States Government, by treaty, from Mexico. Now the Act of Congress of 3d March, 1807, entitled "An Act, to prevent settlements being made on lands ceded to the United States, until authorized by law," expressly inhibits the entry upon taking possession of, or settlement on any lands ceded or secured to the United States by any foreign nation, which lands have not been previously sold or leased by the United States, or the claim to which land has not been previously recognized and confirmed to the person entering, &c., by the United States. (II. Statutes U. S. 445.)

In the case at bar, the defendants pretend to no title whatever from the United States, and we have seen by the Act of Congress of 3d March, 1853, in special reference to lands in California, the land in controversy, claimed, as it is, under the grant of a foreign government, is exempted from pre-emption rights. The defendants are, therefore, to be viewed as mere occupants of the premises without pretence of title. As such occupants, they rest the defence of their possession upon the invalidity of the title of the plaintiff. Under this view of the case, the court will make every intendment which the law allows in favor of the plaintiff's title. The ground on which it is assailed, is, that the grant, under which plaintiff claims, never having received the approval of the Departmental Assembly, conveyed only an inchoate title. Whether in fact such approval was obtained, is matter of evidence. Now, in this case, the grant, in terms, recites that it is given by virtue of the said grant and the approbation the party had received from the most excellent Departmental Assembly. Now, if this recital in the grant be conclusive, there can be no doubt that the fee passed by the grant. If not conclusive, it is prima facie evidence, which must prevail in the absence of all other testimony. The contemporaneous date of the concession and the grant is relied on by the defendants; but this cannot be held as disproving the positive statement in the grant. Non constat that the Assembly was not in session at the time, or an approval of the contemplated grant had not been obtained at some previous session by the Governor. The grant, under any view taken of it, comes within the definition of a colorable title, as given by the Supreme

Court of the United States, who say that "color of title is that which in appearance is title; but which in reality is no title;" (XVIII. How. 56.) The grant professes, and has on its face, all the requisites of a complete legal title, and constitutes, at all events, colorable title, which, accompanied by possession, will maintain an action against mere trespassers.

In the course of the trial, the defendants called the plaintiff, Clement Boyreau, who deposed that he did not know Robert Grimes Davis, except in connection with this case. On the 14th November, 1855, at the request of a friend, he accepted the transfer of the undivided half of 1-18th of the Rancho de San Leandro for the consideration of $8000. He accepted the transfer to oblige a friend; the deed was not delivered to him, it was deposited with his attorneys, Saunders & Hepburn. He had no interest in this purchase himself; a friend requested him to permit the title to be transferred to him; and his attorneys informed him they held the title for him; that it was in their office subject to his disposition. He had never done any act limiting or impairing his title; did not know whether the consideration had been paid by any one. He held the title for a Mr. Touchard; did not give orders personally for the institution of this suit.

The deed to the plaintiff had been previously given in evidence. The defendants now moved to exclude it on the grounds:

1. Because it was merely colorable, and executed solely to give jurisdiction to this court.

2. Because there was no sufficient proof of the delivery of the deed.

The objection was overruled, and the Court thinks correctly.

It was contended that a deed merely colorable passed no title to the plaintiff; but we are of opinion that by this deed, the legal title was vested in him, and that the ground of objection, that he is not the real but merely nominal party to the controversy, the real party being a citizen of this State. Had this objection been taken by plea in abatement, it would have been sustained; but the defendants having omitted to interpose it, cannot now avail themselves of the defence.

Such has been the ruling of the Supreme Court, where the citizenship of the parties to the record has been sought to be shown on a trial of the merits; and the same rule applies where a similar fact is attempted to be proved, with regard to the real party to the controversy.

The expediente of one William Castro was next introduced by the plaintiff. It was proved to have come from and to be a part of the Mexican Archives in the Surveyor-General's office, and contained a copy grant and diseno of a ranch directly bounding on the San Leandro Ranch, and was offered to show the line recognized by the

Mexican authorities at the time as to the line, which on one side bounded the ranch of San Leandro.

It was objected to, and the objection overruled, as the court thinks, correctly.

The plaintiff then introduced several witnesses to establish what are called the rodeo boundaries of the San Leandro. This was objected to, and the objection overruled. The question as to these boundaries will be discussed hereafter.

The genuineness of the grant was assailed by defendants by the introduction of the testimony of one Marcus Esquilla, who deposes, that, in the spring of 1849, he had a conversation with the grantee, Estudillo, in which the latter showed witness the title papers to the rancho, which were not signed; and the reason assigned by Estudillo for their not having been signed, was, that the Government would not make a grant, until he, Estudillo, had effected some settlement with the Indians; that the said papers formed what is called an expediente, and included the form of a grant which was not signed; that said Estudillo told witness these were all his title papers.

This conversation is alleged to have taken place in the spring of 1849.

To discredit this testimony, a witness, Felipe Fierro, was sworn, who deposed that he was well acquainted with Esquilla, and corresponded with him about his business until his death, and subsequently with his brother; that, in May, 1850, both Estudillo and Esquilla happening to be in the store of witness, the latter asked, "who (meaning Estudillo) that gentleman was." Witness did not introduce the parties. It is evident, that, if Esquilla did not know Estudillo in May, 1850, he could not have had the conversation with him he swears to in the preceding year. But still it is better to view the testimony of the discrediting witness as erroneous as to the time, and consider the fact of such conversation as established by the evidence of Esquilla. Still the recollection of a witness as to spoken words of several years' standing, are to be received with caution when the testimony which has been given of the existence of the original grant is considered. The witness may be prepared to swear that a party had said, the papers exhibited were all the papers in his possession; still, there may have been misapprehension as to what was said, or, in fact, all the papers may not have been exhibited.

Again, the reason which the witness assigns as the one given by Estudillo for the non-signature of the grant, to wit, that he had omitted to settle with the Indians, is not in unison with the practice of making grants subject to the Indian rights.

It is further contradicted by the fact in this case, that the grant is made to exclude the possessions of the Indians. A previous settlement, therefore, in relation to them, was not indispensably necessary to the issue of the grant. To divest title on such testimony where the counter-evidence is as strong as it is in this case, would be to decide contrary to the weight of evidence.

Governor Alvarado swears, he issued the grant. The expediente from the archives proclaims, and the long possession of the grantee under it tends to prove its genuineness.

Jose Berreyesa stated, that he had seen the original grant in 1843, and proves the signatures of both Alvarado and Jimeno.

John B. Ward swears, that he had seen the grant, and also proves the signature of Alvarado; and, lastly,

John Saunders swears to have been in possession of the grant.

In view of all the testimony, and acting as jurors, we find that the signatures to the grant have been established. Having stated the rulings of the Court, and the objections of counsel thereto, during the trial, we proceed to consider the merits of the case, and the evidence which establishes the possession of plaintiff and its extent.

It is ascertained that, long previously to the intrusion of the defendants, the grantee, and those who claimed under him, had been in possession of the tract sued for; that, from 1837 to 1842, the grantee had resided on the rancho known as the San Leandro; he had built a house upon it, resided thereon, and stocked it with cattle. His possession previously to the issue of the grant, had not only been recognized, but actually authorized by the Mexican Government; and, in 1842, when he obtained his grant the general limits of his land were notorious. It is proved by numerous witnesses, that, both before and after the grant, the tract he occupied and was recognized as possessing, was the San Leandro Rancho, of which the notorious and undisputed boundaries were the two arroyos of the San Leandro and San Lorenzo, the hills and the bay; and to have been with his family as notoriously and completely in the occupancy of it as, according to the customs of the country, any Californian could be. He occupied it until his death, in 1852, and stocked it with cattle marked with his brand. No one, save a few Indians, lived or occupied any portion of his land; and over the whole tract he asserted all those rights which, at that time, could have been asserted by the proprietor of land in California. He cultivated portions of it in the neighborhood of his house and near the San Leandro Creek.

In 18 the witness Valencia took, by permission of Estudillo, her father-in-law, cattle to pasture on the rancho, which were kept on the tract between the two creeks; and, with the consent of Estudillo, her husband, cultivated a portion of the land on the San Lorenzo Creek. From the whole tract the cattle of Estudillo were gathered, and on the stock, running within its limits, he exercised all the rights of ownership. For the purpose of showing the nature and extent of his possession, the plaintiff introduced testimony to establish what are termed the "rodeo boundaries" of his ranch. The nature of these requires explanation.

The extensive tracts of land belonging to the former inhabitants of this country, were never separated from each other by inclosures.

But a small portion of the large extent owned by the rancheros was put under cultivation; and their herds of horses and cattle, in which their principal wealth consisted, roamed at large over the extensive tracts conceded to them by the Government. At a certain season of each year, however, the cattle were collected from the limits of the rancho, at a place usually near its centre, called the "rodeo" ground. Here the young cattle were branded with the mark of the owner, and the whole herd were confined for a short period, to habituate them to the spot, and insure their return at the ensuing season. The proof of ownership, furnished by the brand on the animals, seems to have been universally respected, and wherever the cattle might wander they could be reclaimed by the owner. The young unbranded cattle, which still followed the mother, were recognized as belonging to the owner of the latter. But there were many which had no mark, and having ceased to follow the mother, mingled indiscriminately with the herd; these were called orijanas, and, by the custom of the country, were deemed to belong to the owner of the ranch on which they were found. In driving, therefore, the cattle to the rodeo, the vaqueros were required to observe scrupulously the boundaries of the ranch, for only the orijanas found within them were considered as belonging to the proprietor giving the rodeo.

That these boundaries were generally respected is proved by several witnesses,—to drive cattle, on the occasion of a rodeo, from a neighbor's land, being considered, as stated by one of them, "worse than squatting." The observance of the boundaries was not secured by the customs of the country alone, for the neighboring rancheros were always invited to be present when a rodeo was to be given, and attended on horseback to observe the limits from which the cattle were driven, and to reclaim any of their own that might have mingled with the herd. The rodeo boundaries of a ranch, or the limits from within which all the cattle upon it were collected together, thus became generally known; and when, as in the case at bar, they have been recognized and acted upon for a long series of years, they afford the best, if not the only evidence of the limits of an actual occupation which the habits of the people permitted them to furnish. To exact of proprietors, using their lands for purposes so different from those to which we apply them, evidence of actual occupation by inclosures or cultivation of the soil, would be to demand what could never be afforded. There is surely no magic in a fence. In a country where land is owned in small parcels, and usually inclosed, such inclosure affords unmistakeable evidence of appropriation and occupancy. When, therefore, a right is claimed to have been acquired by an adverse possession without color of written title, the party is restricted to the land, the exclusive right to which he has asserted notoriously by inclosing or cultivating it. The fence or cultivation of themselves, confer no title; they only afford evidence of the intention to assert a right to the land included within them. The same evidence

is afforded by an entry on, and occupation of, a part of a tract of land under color of written title to the whole. For, in that case, a party is deemed to be in possession up to the limits of his deed.

But other acts, equally significant of the party's intention (being the strongest that circumstances admit) may have the same effect. Where, by the customs of a country, acts of ownership have been exercised, and the land within certain limits recognized as claimed by those acts; where the party has used and possessed the land in the only way in which an owner could use and possess it, and as none but an owner would use it; where the limits of the land, to which he thus asserts his rights, are notorious, and have been recognized for a series of years, and undisputed;—it seems, to us, that such facts furnish evidence of a possession, as satisfactory as if, according to the custom of an old and settled country, a fence had been built about it, and sufficient to enable a party to maintain his right to it in a court of justice against intruders who have entered, not only without pretence of title, but in open violation of law.

In this case, the rodeo boundaries are clearly shown to have been established and recognized by the neighbors of Estudillo from a period long anterior to the acquisition by the United States of this country. By the ascertainment of these boundaries, the plaintiff has established the actual extent of his actual possession. To fortify the evidence of possession, testimony was adduced to prove, that, in 1853, shortly after the death of Estudillo, his representatives, who continued to reside on the land, rented a portion of it, about three hundred acres, to one Joseph Demont, who entered into possession. This land was inclosed by a fence, and includes the land upon which one of the defendants, and a portion of the land upon which another, have "settled."

In the same year, and after the encroachments of American settlers had taught them the virtue of a fence, the representatives of Estudillo employed one J. C. Pelton, who, under their direction, fenced in several thousand acres, and erected on the land some six or seven houses. The fences and houses have been burned by accidental fire, and a portion of the land is now occupied by some of the defendants to this action.

Recapitulating, then, the evidence as to possession, we find that Estudillo, the grantee, went into possession in 1837. In 1839, he obtained a provisional license to continue in possession from the Governor. That, in 1842, he obtained a grant, from the date of which he had occupied and claimed the ranch of San Leandro, with well-known boundaries. That he built a house upon, and cultivated portions of the land. That he had his fields, corrals, and rodeos. That his cattle roamed over it, bearing his brand, and were herded upon it by his vaqueros. That at stated periods, according to the recognized customs of the country, his cattle were driven together from the external limits of the ranch; and that, in every way in which a

Californian could use land, he exercised acts of ownership over it. That the ranch was recognized as being in his possession; and so notorious was the fact, that an old resident of the country swears "that it was so fixed in his mind that he was the owner, that he took it for granted." After the death of Estudillo, we find his representatives residing upon and claiming the whole of it; and though intrusion soon commenced, in the hope of retaining it, renting a portion of it, and surrounding with fences several thousand acres, portions of which are now "settled" upon as vacant public lands.

If the foregoing facts do not constitute possession, then no occupancy can be established by a California ranchero; for nothing short of actual inclosure or cultivation would suffice. We consider the evidence sufficient to establish a prior and peaceable possession, and its extent so as to authorize the plaintiff to maintain this action. The rodeo boundaries have been established so clearly by the testimony, that the plaintiff might have recovered to the extent of them. But he has himself introduced a written title, and to that we must look.

The grant calls for the boundaries of the ranch, the arroyos of San Leandro and San Lorenzo on the north and south; on the west, by the Bay; and on the east, by the deramadores or springs of water; and from thence by a line southerly drawn to the San Lorenzo so as to exclude the possessions of the Indians. These limits on the east are considerably within the line of the crest of hills, which, according to the testimony, forms the eastern rodeo boundary. But the plaintiff producing this grant, must be restricted to the boundaries therein designated. At the time of the grant, one or two Indian families inhabited an adobe house, on the land, at the base of the eastern hills, and had some cultivation near the house, and at a bend of the San Lorenzo, at a point called the "Paso Viejo." It is not easy to ascertain what, at that time, was the precise extent of the Indian possessions. It is practicable, however, to adopt a line which will exclude the land which, under any reasonable view of the evidence, they could have occupied. With the exception of the uncertainty which attends the precise location of this eastern line, the boundaries of the ranch have been ascertained, by proof, of what we consider a complete possession as could be furnished by any California ranchero. The quantity of land granted to Estudillo was one league, more or less. It appears from the testimony, that the actual quantity exceeds that amount but a fraction, and may be deemed to be covered by the words "more or less," inserted in the grant. The complete possession of all the land to the extent of three of the boundaries, and beyond the fourth, is established by proofs. It remains to inquire, after restricting the last-mentioned line to that called for in the grant, which of the defendants are intruders upon it. A stipulation by the parties has been filed, in which it is agreed, that the defendants respectively occupy the several tracts designated by their names on a

map, marked A, to which reference is made. On inspecting this map, we find some of the defendants in the occupancy of land, which, at the time of the grant, was probably in the possession of the Indians.

We shall, therefore, direct a verdict of "not guilty" against them.

Against those, who are clearly in possession of land not excluded by the grant, by reason of the Indian possessions, a verdict of "guilty" must be rendered.

We have fixed the line according to the limits as ascertained by the testimony, in this case, leaving its precise location to be established hereafter as between the Government and the parties interested in its precise location.

The attorneys of the plaintiff will draw the form of a verdict for signature in favor of William Campbell and William Cathcart, and against all the other defendants, who, by the stipulation entered into, it is agreed are in possession of the premises.

After the opinion of the Court had been read, the counsel for the defendants moved the Court to reconsider so much thereof as related to the eastern boundary line of the ranch. Whereupon the Court, after argument of counsel, took the same under advisement; and afterwards delivered the following, affirming the former opinion of the Court:

In this case we have been asked by defendants' counsel, to reconsider our views in relation to the location of the eastern line of the San Leandro Ranch. The line, as fixed by us, excludes two of the defendants, and includes the balance; and it is urged, that a reexamination by the Court may result in so giving the line as to exclude from the operation of the verdict an additional number of the defendants. We have carefully examined this question, and now give the result.

We are free to confess, that the precise location of the eastern line is not easy of accurate ascertainment. This arises from the difficulty of establishing with precision the exact extent of the Indian possessions at the time of the issue of the grant. The testimony on this point is conflicting; but, after a careful review of it, our conclusion is, that the possessions of the Indians were confined to the adobe house, which they occupied, and its immediate vicinity, and to some cultivated spots of land near the bend of the San Lorenzo Creek, at a point known as the "Paso Viejo." Numerous witnesses confine them to those points. One or two of the witnesses testify to a small cultivation almost due west from the springs and about half a mile therefrom. But this is opposed by many witnesses, and is repudiated by the fact, that to run the line so as to take in this isolated spot, would be to so distort a line, as we consider it designated on the map, as almost to destroy its identity. The defendants' counsel, in his brief, relies on a line deposed to by one of the witnesses, Ignatius

Peralta. That this line was not intended to separate the Indian possessions from the land of Estudillo is evident, because the witness tells us that he knew the ranch of Estudillo in 1840, 1841, 1842, and 1843, and that he knew no line dividing the land of Estudillo from that of the Indians, although the witness had lived for twelve years within two hundred varas of Estudillo. The line, which the witness deposes to, is evidently a line known, in the case, as the "longitude line," which, with the "latitude line," were run by the functionary Fernandez for the information of Governor Alvarado. This line of longitude, denominated, in the counsel's brief, the "Peralta line," is urged as the line delineated in the desino of Estudillo's expediente, and described in the grant. This line is designated in the grant, using the words into which the original has been rendered by the counsel, "a line on the east by the spellings of the springs, that are near the house occupied by the Indians, and, on the south, by a line drawn from thence to the San Lorenzo, so as to exclude the land occupied by the Indians which are located there. Assuming this translation to be correct, there are objections which oppose themselves to the location of this specific line:

1. To adopt it, would be taking a part of two lines designated on the desino to form the boundary, viz., the line of latitude to the springs, and thence leaving that line, to adopt the line of longitude from that point to the mouth of the San Lorenzo Creek.

2. Such line must, at the springs, diverge to the west, and run to the mouth of said creek, instead of running to the creek as called for; this would be to repudiate the creek as a boundary. Whereas the desino has written all along that creek these words: "Arroyo de San Lorenzo lindero con San Jose;"—thus distinctly declaring the line of that creek to be the boundary between the ranch and San Jose.

3. This line would exclude a considerable portion of land intermediate the springs and the creek, which, confessedly, has never been in the possession of the Indians.

4. It is not probable that the grant would call for the creek parallels, as it runs to the opposite creek of San Leandro, as the terminus of the line called for, instead of its mouth, if the latter was intended.

These are some of the difficulties which suggest that this longitude line is not the one designated on the map. There are other considerations growing out of the grant itself. To arrive at a correct translation of it, we have invoked the aid of competent, skilful, and disinterested persons. The defendants have rendered the words, "por la parte del sud," in the grant, as meaning "on the south," equivalent for the southern boundary. Now we understand these words, in the connection in which they are used, to be translated differently; and, further, we consider that, by the terms of the grant, the line, to be run from the springs of water, is to be a straight line.

The grant, including the words "por la parte del sud," reads "the boundary on the east;" the drainings (deramadores) of the springs in the lands occupied by the Indians settled there, from this point in a straight line towards the south to the arroyo de San Lorenzo, without including the land cultivated by the Indians. By this description, the line is delineated as a "straight line" from the starting-point to the creek, deflecting only so far as to exclude the Indian possessions. Calling for a "straight line," it would seem that a direct one was intended, departing only from a direct line to the extent of excluding the Indian possessions. Now the line of longitude would, if adopted, traverse the greatest distance, which, at any point, intervenes between the starting-point and the creek, viz., its mouth. Again, the line called for by the grant is to go south; and the longitude line, if adopted, would run west from the deramadores to the mouth of the creek. We have seen that the map itself calls for the San Lorenzo as the boundary in terms, and by having, in writing, on its face along the creek, the words we have quoted. Again, in the report of Jose Castro to the Governor, it is stated that the Mexican functionary, Fernandez, had delineated two lines on the desino, one of longitude, and the other of latitude, leaving the selection to his Excellency. By his marginal decree, the Governor selects the line north and south as the line of W. Castro's land. This line, it is true, was selected some time prior to the grant of Estudillo; but it serves to show the understanding of the Government as to the dividing line between the land granted and the adjoining land. This line is not only delineated on the map which accompanies the expediente of William Castro, but is found also on that of the expediente of Estudillo when he obtained the grant for the adjoining land.

Governor Alvarado, who issued the grant, swears to the San Lorenzo as the southern boundary. Numerous witnesses depose to the same fact.

Ignatius Peralta, one of the defendants' witnesses, states that, for a long period, he lived in the immediate vicinity of Estudillo, and that during that time the pasturage of Estudillo's cattle extended over the plain up to the San Lorenzo on the one side, and the San Leandro on the other.

Durante Valencia, a witness, states that, in 1842, with the permission of Estudillo, she cultivated lands on the bank of the San Lorenzo.

And another witness, A. C. Smith, deposes that, in 1851, Estudillo had forty acres in barley on the same creek.

The occupancy of Estudillo up to the San Lorenzo, and its notoriety as the southern boundary, have been established by testimony. The facts connected with what we consider the correct interpretation of the grant, confirms us in the conclusion that the line, approximating to what is termed the adobe line, is the true line; and the most careful examination to the testimony, and the language of the grant, have

brought us to the conclusion, that protection has been afforded to the former Indian possessions by fixing the line designated in the grant as the eastern boundary, by which all the defendants, save Campbell and Cathcart, have been brought within the limits of the San Leandro Ranch.

And defendants pray, that this their bill of exceptions may be signed, sealed, and made a part of the record, which is done accordingly.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States for the Districts of California.

Indorsed: Filed January 28th, 1857.
GEO. PEW JOHNSTON,
Clerk.
WM. STONE BOTTS,
Dep'y Clerk.

Thereupon, to wit, on the 28th day of January, one thousand eight hundred and fifty-seven, the following Bill of Exceptions was filed, in this cause, in these words, that is to say:

Bill of Exceptions.

United States Circuit Court, for the California Districts.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL et als.

Bill of Exceptions.

Be it remembered, that on the trial of this action the plaintiff, in order to maintain the issue on his part, and show title to the premises in Jose Joaquin Estudillo (the source of his title), produced from the archives of the Office of the United States Surveyor-General of the State of California certain papers, called, in the Spanish language, "expediente," purporting to be a petition of said Estudillo to Governor Alvarado for the place called "San Leandro," the copies of an order of a concession and a grant, and map or desino; and in order to prove that the original grant, of which the one among said expediente purported to be a copy, was actually executed and delivered to said Estudillo, the plaintiff (after the preliminary proofs hereinafter mentioned of the existence, contents, and loss of the grant) called Juan B. Alvarado as a witness, who, being sworn, testified that he did execute and deliver to said Estudillo, in 1842 or 1843, a grant for the place called San Leandro; that he read said grant so signed by him, before he delivered it; and that he afterwards, in 1844, saw the same in the possession of the said Estudillo; that he

had never himself compared it with said copy in said expediente found, and testified from memory of its contents, which agreed with said expediente, except that he could not testify to the precise date of the grant. Upon looking on the expediente of the grant, witness testified that he could swear, from his independent recollection, that the grant issued, and that the copy in the expediente is a copy of the same, excepting that the date, as to which he does not precisely recollect; and that the grant delivered to Estudillo was signed by witness, as governor, and by Jimeno, as secretary; and that the grant itself so by him delivered, as well as the concession and grant found in the expediente, were in the handwriting of one Francisco Arce, now living in Monterey County, in this State.

And the plaintiff, having first proved by other evidence the loss of the original grant of said Estudillo, and its former existence, and usages of the country in relation to recording of said expedientes as hereinafter mentioned, offered in evidence said expediente, embracing all the papers aforesaid, to wit, the said petition and forms of concession and grant, for the purpose of proving and showing thereby the contents of said grant to said Estudillo, and for the purpose of showing the legal title of said land to be in said Estudillo.

And the plaintiff further showed and proved by evidence, that no other record, except said expediente, was kept or found among the archives of the former Government of Mexico, now in the Surveyor-General's office, except an index of grants, which was produced and proved in evidence, showing the grant to Estudillo of San Leandro, of the date of the grant. And said Alvarado testified that it was during his time as governor (from 1838 to 1847), the custom to place among the expedientes to be kept a copy of all grants issued, together with all documents relating to the subject-matter, which said expedientes were kept together, placed and kept among the Government archives by the Government officers; and all the papers and documents so kept together relating to a grant of land, and placed among said archives, were called the expediente of the grant; and the expediente of this grant was in accordance with the usage of this country. And plaintiff also proved by other evidence, that said original grant was actually in existence, and in the possession of said Estudillo, in 1844 and 1845, which said evidence was adduced before said expediente and proof of contents as aforesaid.

The foregoing being all the evidence given on the trial by the plaintiff in regard to the making and delivery of said grant to the said Estudillo; to the reception whereof, as evidence, defendants objected:

1. Because the expediente offered in evidence, is not a record authorized by law to be made.

2. The same is not the best evidence which the nature of the case admits of. Francisco Arce, who drew the papers, should be produced.

3. Because the proof offered is incompetent and irrelevant, and immaterial to the issue, and does not prove, or tend to prove, a legal title in Estudillo or the plaintiff.

Which objections were overruled by the Court, and the said expediente was received in evidence; which, together with the testimony of Alvarado, as hereinbefore stated, was all the evidence upon which the Court found that a grant had been made by the Mexican Government to said Estudillo.

To which decision of the Court, so admitting the said expediente in evidence, and to the said finding of the Court upon such evidence, the said defendants, by their counsel, then and there excepted, and pray that this their Bill of Exceptions may be signed and sealed and made a part of the record, which is done.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the District of California.

Indorsed: Filed January 28th, 1857.

GEO. PEW JOHNSTON,
Clerk.

WM. STONE BOTTS,
Dep'y Clerk.

Thereupon, to wit, on the 29th day of January, one thousand eight hundred and fifty-six, the following judgment was filed, in this cause, in these words, that is to say:

Judgment.

Circuit Court of the United States, for the Districts of California.

CLEMENT BOYREAU
v
ROBERT CAMPBELL, William F. Miller, Hiram A. Van Heyning, John Scillen, Henry Scillen, Moses Wicks, Thomas E. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmermrn, Augustus Johnson, William Cathcart, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, John McLelland.

This cause came on for trial regularly in its order, on the 8th day of October, A.D. 1856; and, by consent of parties, was tried before

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the Court without a jury,—a jury being expressly waived by the parties, and the same having been submitted upon the pleadings, evidence, and argument of counsel, therein,—the Court delivered a general verdict, and filed herein its finding of facts and conclusions of law herein, on the 28th day of January, A.D. 1857, from which, and the map thereto annexed, it appears that defendants occupy, in certain proportions indicated therein, respective parcels of the land described in the complaint, as to which they are respectively guilty of the trespass alleged in the complaint, and that plaintiff is justly entitled, in fee, to one undivided thirty-sixth part of the said respective parcels against defendants so respectively occupying the same as aforesaid, except as to the defendants William Campbell and William Cathcart, occupying a piece of said land indicated by said finding and map annexed, as one hundred and sixty acres at the base of the hills, as to which the said William Campbell and William Cathcart are not guilty of the trespass alleged in the complaint; and when any parcel (other than the parcel of 160 acres, as aforesaid, at the base of the hills) is occupied by two or more of the defendants, then, as to such parcel, that plaintiff do recover, as aforesaid, against said defendants so holding jointly in respect of such parcel so held by them, and that they be and are acquitted in respect of the residue of said land described in the complaint not held by them or either of them according to said finding and map.

It is, therefore, considered, that the said Clement Boyreau, plaintiff herein, do recover against the defendants, respectively, possession of said share and estate of and in the respective and several parcels of land indicated and described in and by said map (which is referred to as part hereof), as occupied respectively by them the defendants as aforesaid; and that each of said defendants, as to the residue of tenements, described in the complaint, not shown by said map to be occupied by him, whereof he is acquitted, go thereof without day.

And that defendants, William Campbell and William Cathcart, as to the land aforesaid, one hundred and sixty acres, at the foot of the hills, as shown on said map and represented thereby to be occupied by them, whereof they are acquitted, go, in respect thereof, without day, without prejudice to other actions or proceedings between the parties or their assigns in relation thereto.

And when any parcel (other than the parcel of 160 acres aforesaid, at the base of the hills) is occupied by two or more of the defendants, then, as to such parcel, that plaintiff do recover, as aforesaid, against said defendants so holding jointly, in respect of such parcel so held by them; and that they be and are acquitted in respect of the residue of said land, described in the complaint, not held by them or either of them according to said finding and map.

And further, that plaintiff do have and recover his costs to be taxed herein.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Indorsed: Filed January 29th, 1857.

GEO. PEW JOHNSTON,
Clerk.
W. CUTLER McALLISTER,
Dep'y Clerk.

Whereupon, to wit, on the 2d day of February, one thousand eight hundred and fifty-seven, the following petition for Writ of Error was filed in this cause, in these words, that is to say:

Petition for Writ of Error.

United States Circuit Court, for the California Districts, Northern District.

CLEMENT BOYREAU
v.
ROBERT CAMPBELL, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Lock, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John McLelland.

Came now the said defendants, and pray, that a Writ of Error may be allowed and granted to remove the record of the judgment herein rendered against them from this Court to the Supreme Court of the United States, for the purpose of correcting such errors, hereafter to be assigned, as may alleged herein.

H. M. CRANE,
Defendant's Attorney.

Indorsed: Filed February 2d, 1857.

GEO. PEW JOHNSTON,
Clerk.
CUTLER McALLISTER,
Dep'y Clerk.

Thereupon, to wit, on the 2d day of February, one thousand eight hundred and fifty-seven, the following Bond on Writ of Error was filed in this cause, in these words, that is to say:

Bond on Writ of Error.

Know all men by these presents, that we, Alexander Powell, Hiram A. Vanheyning, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Jeremiah Boyce, Darvin D. Mann, Elijah F. Dickson, Miranda Kemble, Joseph H. Taylor, John Huff, Charles Shutliffe, John Woods, James Adams, John Chisolm, Emerson T. Crane, Nelson H. Olds, William Campbell, James Kennedy, Augustus Johnson, John McLelland, Peter Johnson, William B. Hardy, Peter Conroy, Thomas Corey, Jacob Everson, Alexander Allen, George Zimmerman, John Scillen, and Franklin M. Wray, as principal, and George P. Loucks, James P. Vailliant, John G. Bray, and George W. Kniser, as sureties, are held and firmly bound unto Clement Boyreau in the sum of three thousand and five hundred dollars, for the payment whereof, well and truly to be made, unto the above-named Clement Boyreau, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators; and each of us and of them, jointly and severally, firmly, by these presents, sealed with our seals, and dated this second day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above-named Clement Boyreau has obtained and recovered judgment, as plaintiff therein, in an action tried and determined in the Circuit Court of the United States, for the California Districts, Northern District, against Robert Campbell, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, John Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John McLelland, defendants, in said action in ejectment, for the recovery of certain land specified and set forth in said judgment, now remaining of record in said Court, besides costs of suit.

And said persons last-named, against whom said judgment has been rendered, as aforesaid, in said action, have sued out and prosecuted a writ of error to the Supreme Court of the United States, directed to the said United States Circuit Court for the Districts of California, Northern District, aforesaid, to reverse the said judgment, so as aforesaid rendered in said Court in favor of said plaintiff against said defendants last named.

Now, therefore, the condition of this obligation is such, that, if the said above-named Robert Campbell, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter

Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John McLelland, shall prosecute their said writ of error to effect and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise shall be and remain in full force and virtue.

Executed in presence of
A. M. CRANE.

JOHN McLELLAND, [L. S.]
PETER JOHNSON, [L. S.]
WILLIAM B. HARDY, [L. S.]
PETER CONROY, [L. S.]
JACOB EVERSON, [L. S.]
ALEXANDER ALLEN, [L. S.]
GEORGE ZIMMERMAN, [L. S.]
JOHN SCILLEN, [L. S.]
FRANKLIN M. WRAY, [L. S.]
GEORGE P. LOUCKS, [L. S.]
JAS. B. VALLIANT, [L. S.]
JNO. G. BRAY, [L. S.]
G. W. KINZER, [L. S.]
A. L. POWELL, [L. S.]
HIRAM A. VANHEYNING, [L. S.]
EMERSON T. CRANE, [L. S.]
NELSON H. OLDS, [L. S.]
WILLIAM CAMPBELL, [L. S.]
MOSES WICKS, [L. S.]
THOMAS W. MULFORD, [L. S.]
E. MINOR SMITH, [L. S.]
WM. C. SMITH, [L. S.]
JOHN B. LOCK, [L. S.]
JEREMIAH BOYCE, [L. S.]
DAREVIN D. MANN, [L. S.]
ELIJAH F. DICKSON, [L. S.]
MIRANDA KEMBLE, [L. S.]
JOSEPH H. TAYLOR, [L. S.]
JOHN HUFF, [L. S.]
CHARLES SHUTLIFFE, [L. S.]
JOHN WOODS, [L. S.]
JAMES ADAMS, [L. S.]
JOHN CHISOLM, [L. S.]
JAMES KENNEDY, [L. S.]
AUGUSTUS JOHNSON, [L. S.]

The foregoing bond and sureties approved.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Northern District of California, *ss.*

George P. Loucks, Joseph B. Valliant, John G. Bray, and G. W. Kinzer, being duly sworn, deposes and says, each for himself, and not for the others, that he is worth the sum of thirty-five hundred dollars, over and above all his just debts and liabilities.

GEO. P. LOUCKS,
JAS. B. VALLIANT,
JNO. G. BRAY,
G. W. KINZER.

Sworn to, this 2d day of February, A.D. 1857, before me.

GEO. PEW JOHNSTON,
U. S. Commissioner.

Indorsed: Filed February 2d, 1857.

GEO. PEW JOHNSTON,
Clerk.
CUTLER McALLISTER,
Dep'y Clerk.

Thereupon, to wit, on the 2d day of February, one thousand eight hundred and fifty-seven, the following Citation to Defendant in Error was filed in this cause, in these words, that is to say:

Citation to Defendant in Error.

United States of America, *ss.*

To Clement Boyreau. Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the United States Circuit Court, for the California Districts, Northern District, wherein Robert Campbell, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith, John B. Locke, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Philips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and John McLelland, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment, in said writ of error

mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Witness, the Hon'ble M. H. McAllister, Judge of the United States Circuit Court, for the California Districts, this second day of February, A.D. 1857.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Indorsed: Filed February 2d, 1857.

GEO. PEW JOHNSTON,
Clerk.
CUTLER McALLISTER,
Dep'y Clerk.

State of California, United States Circuit Court, for the Northern District of said State.

City and County of San Francisco, *ss.*

Addison M. Crane, being duly sworn, says, that he is a resident of Alameda County, in the State and District aforesaid; that he knows Clement Boyreau (defendant Boyreau), defendant in error, named in the foregoing citation; and that, on this 26th day of March, A. D. 1857, at the City and County of San Francisco aforesaid, he personally served upon him the foregoing citation, by handing to him personally a full, true, perfect, and complete copy thereof, and, at the same time, showing him the foregoing original citation.

A. M. CRANE.

Subscribed and sworn to, March 26th, 1857, before me.

CUTLER McALLISTER,
U. S. Commissioner.

Thereupon, to wit, on the 2d day of February, one thousand eight hundred and fifty-seven, the following Writ of Error was filed in this cause, in these words, that is to say:

Writ of Error.

United States of America, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the California Districts, Northern District. Greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said Circuit Court, before you, between Clement Boyreau, plaintiff, against Robert Campbell, William F. Miller, Hiram A. Vanheyning, John Scillen, Henry Scillen, Moses Wicks, Thomas W. Mulford, E. Minor Smith, William C. Smith,

John B. Locke, Peter Conroy, Jeremiah Boyce, Darevin D. Mann, William B. Hardy, Miranda Kemble, Bonaparte Phillips, Joseph H. Taylor, Elijah F. Dickson, John Huff, Franklin M. Wray, Charles Shutliffe, John Woods, James Adams, John Chisolm, Alexander Allen, Emerson T. Crane, Freedom H. Cowles, Nelson H. Olds, William Campbell, James Kennedy, George Zimmerman, Augustus Johnson, Jacob Everson, Peter Johnson, Thomas Corey, Alexander Powell, and J. McLelland, a manifest error hath happened, to the great damage of the said defendants therein last named, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf:

You are hereby commanded, that if the judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this second Monday of December, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eighty-first year.

In testimony whereof, the Clerk of the said Circuit Court hath hereunto subscribed his name and affixed the seal of said United States Circuit Court, on this second day of February, A. D. 1857.

[L. S.]

GEO. PEW JOHNSTON,
Clerk.

WM. STONE BOTTS,
Deputy Clerk.

Indorsed: Filed February 2d, 1857.

Circuit Court of the United States of America, for the Districts of California, in and for the Northern District.

I, Geo. Pew Johnston, Clerk of the Circuit Court of the United States, for the Districts of California, in and for the Northern District, do hereby certify, the foregoing pages and maps, annexed to this certificate, contain a full, true, faithful, and correct transcript of the record of the proceedings had in the cause wherein Clement Boyreau is plaintiff, and Robert Campbell et als. are defendants.

In witness whereof, I have hereunto set my name, and
[SEAL.] caused to be affixed the seal of said Court, this 18th day of July, A.D. 1857.

GEO. PEW JOHNSTON,
Clerk.

By WM. STONE BOTTS,
Deputy Clerk.

Indorsed: N. California; C. C. U. S.; No. 150; Robert Campbell et als., pl'ffs in error, *v.* Clement Boyreau. Filed 17th Oct. 1857.